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SIR JOHN MACDONELL, C.B., LL.D.,

AND

EDWARD MANSON, Esq.

"Δεῖ καὶ τὰς ἄλλας ἐπισκέψασθαι πολιτείας . . . ἵνα τό τ'ὀρθῶς ἔχον ὀφθῃ καὶ τὸ χρήσιμον."—Arist. *Pol.* II. 1.

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The Rt. Hon. Sir William Rann Kennedy,
Lord Justice of Appeal.

THE RIGHT HON. LORD JUSTICE KENNEDY.

[*Contributed by* A CORRESPONDENT.]

THE portrait in this number of the Journal is that of Lord Justice Kennedy. Some twenty-eight years ago this eminent judge came to the Bar with a very high reputation as a classical scholar—a distinction hereditary, one may say, in his family. He was trained in the school of the Northern Circuit, when Herschell, Russell, Gully, and Holker were leaders. In friendly rivalry with Mr. Justice Bigham, Mr. Justice Walton, and Mr. Justice Pickford, he soon acquired a large practice in commercial cases and in the Admiralty Court. Appointed a Judge of the High Court upon Lord Herschell's nomination, he took a prominent part in the work of the Commercial Court in its early years.

Well versed in commercial law, his considered judgments in commercial cases enjoy the highest reputation in the profession. The well-known case of *Bechuanaland Exploration Co.* v. *London Trading Bank* [1898, 2 Q.B. 658], in which the growth of the law merchant in establishing the negotiability of debentures to bearer is stated and adopted, is a good example of his careful and instructive judgments on legal questions. His best friends admit that as a judge of fact he would have been even more successful had he been less modest and less distrustful of the correctness of his own first impressions; and it was felt that his well-earned elevation to the Court of Appeal in 1907 afforded scope for the exercise of the stronger and rarer part of his judicial nature.

Still comparatively young as judges go, he has before him great opportunities for useful work as an exponent of commercial law in the Court of Appeal, with the advantage of an ample and well-ordered knowledge of its principles. He has been uniformly courteous to the Bar, and every lay client has felt that his case was receiving a fair and patient hearing. His cases have been heard as well as decided. When a point of law arises in salvage cases, Sir William Kennedy's treatise on Salvage is always resorted to, and never without instruction and guidance.

We have said nothing of one part of his activity—his efforts to improve and unify maritime law. Few, if any, English judges are better known in the United States and on the Continent, where his papers on points of maritime and international law are valued as much as they are here. Such a paper as that which he read at the Congress of Lawyers and Jurists at St. Louis, upon the question "To what extent should judicial action by Courts of a foreign nation be recognised?" is only one of several important contributions which he has made to the development of international law.

MERCHANT SHIPPING LEGISLATION IN THE COLONIES.

[*Contributed by* A. Berriedale Keith, Esq.]

The General Position of Merchant Shipping.—Every merchant vessel which does not confine its operations to coasting round the coasts of the country in which it is registered must necessarily fall under at least two jurisdictions, and in many cases under more. Over-seas vessels find themselves often within the limits of several foreign jurisdictions in addition to the jurisdiction of the country in which they are registered. From this fact there inevitably arises a conflict of laws, and if each country which at one time or other could *de facto* exercise jurisdiction over merchant vessels were to do so, it would clearly be impossible for any vessel to be constructed or manned which could comply with all the regulations to which it might be made subject. In practice the difficulty is considerably mitigated by the rule that a vessel falls as a general principle under the legislation of its flag, that is, of the country in which it is registered. Thus, in the case of a merchant vessel, the general law applicable will be the law of the country of registration, and it will only fall under the jurisdiction of other States in so far as regards matters actually taking place within the ports or the territorial waters of the other States. Even as regards the question of maintaining order on board foreign vessels while in the harbours, the practice is to interfere as little as possible with foreign vessels, and the consul of the nationality to which the vessel belongs is allowed to exercise considerable authority in settling disputes between the sailors.[1] It is, however, inevitable that some restrictions should be imposed upon foreign vessels resorting to the ports of any country. If that country passes restrictive jurisdiction requiring certain conditions to be fulfilled with regard to vessels registered locally, there will obviously be strong pressure from local owners to secure that foreign vessels shall not fail to observe similar limitations. The tendency in England is towards increasing severity with regard to foreign vessels. The Merchant Shipping Act, 1906, expressly applies to foreign ships the British load-line provisions, authorises the detention of foreign ships when unsafe owing to defective equipment, etc., provides as to the loading of grain cargoes on foreign ships, applies

[1] See *e.g.* Hall, *International Law*, pp. 203 *seq.*; Moore, *International Law Digest*, §§ 204 *seq.*

to all foreign shipping within any port of the United Kingdom certain rules as to life-saving appliances, regulates the loading of timber on foreign vessels which enter British ports, includes foreign steamships under the definition of passenger steamships, and so forth.

The Importance of Uniformity in Legislation.—It is clear that the process of applying to foreign vessels the rules which bind British vessels is one which requires to be carried out with the greatest possible care, inasmuch as the vast carrying trade of the Empire depends to a large extent on the action of foreign nations, which could similarly insist upon British vessels conforming to tests which could, without trouble, be made such as to exclude vessels which could satisfactorily pass every requirement of the Board of Trade. In view of these facts the greatest importance naturally attaches to the maintenance of uniformity of legislation as regards foreign vessels through the British dominions; no foreign Power can be expected to discriminate between the rules in force in the British Islands and those in force in the Dominions, and if conditions which they consider too severe are exacted from foreign vessels in colonial ports, it is only too certain that any retaliation which may take place will take the form of a general retaliation aimed, not at the comparatively small shipping registered in the Dominions, but at the enormous shipping of the United Kingdom itself. Any undue severity in the conditions imposed in the Dominions may, therefore, re-act most unfavourably on the United Kingdom, and the United Kingdom is, therefore, undoubtedly interested in any legislation passed by the Dominions for the regulation of foreign shipping.

The History of Dominion Legislation as to British Shipping.—Still more directly is the United Kingdom interested in the legislation of the Dominions which affects British shipping, and that legislation has of late years become of increasing importance, inasmuch as it has gradually come to differ more and more from the provisions of the Acts of the Imperial Parliament relative to navigation. Originally, of course, as long as the Navigation Acts were in force the Imperial Shipping Acts formed a code which applied to all the Colonies, and which no colonial legislature was entitled to set aside or alter. With the disappearance of the system adopted in the Navigation Acts, greater liberty was at once accorded to the Colonies, and the Merchant Shipping Act of 1854, which inaugurated the new system, provided by s. 547 that "the legislative authority of any British Possession shall have power by any Act or Ordinance confirmed by Her Majesty in Council to repeal wholly or in part any provisions of this Act relating to ships registered in such Possession; but no such Act or Ordinance shall take effect until such approval has been declared in such Possession, or until such time thereafter as may be fixed by such Act or Ordinance for the purpose."

The next step in the emancipation of the colonial legislature from the

control of the Imperial Parliament was made by the Merchant Shipping Act of 1869, s. 4 of which provided that—

after the commencement of this Act, the legislature of a British Possession by any Act or Ordinance from time to time may regulate the coasting trade of that British Possession, subject in every case to the following conditions :

(1) The Act or Ordinance shall contain a suspending clause providing that such Act or Ordinance shall not come into operation until Her Majesty's pleasure thereon has been publicly signified in the British Possession in which it has been passed.

(2) The Act or Ordinance shall treat all British ships, including the ships of any British Possession, in exactly the same manner as ships of the British Possession in which it is made.

(3) Where by a treaty made before the passing of this Act Her Majesty has agreed to grant to any ships of any foreign State any rights and privileges in respect of the coasting trade of any British Possession, such rights and privileges shall be enjoyed by such ships for so long as Her Majesty has already agreed or may hereafter agree to grant the same, anything in the Act or Ordinance notwithstanding.

These provisions as to the powers of colonial legislatures to regulate vessels registered in the Colonies and to regulate their coasting trade are repeated in substance by s. 735, which excludes the provisions of Part III. of the Act as regards emigrant ships from the general grant of power, and s. 736 of the Merchant Shipping Act of 1894. That Act, moreover, confers special powers on colonial legislatures by s. 264, which provides that if the legislature of a British Possession by any law applies or adapts to any British ships registered in, trading with, or being at any port in that Possession and to the owners, masters, and crews of those ships, any provisions of Part II. of the Act which would not otherwise so apply, such law shall have effect throughout Her Majesty's Dominions and in all places where Her Majesty has jurisdiction in the same manner as if it were enacted in the Act. The force of this provision, as appears from s. 261 of the Act, is to enable a colonial legislature to enforce the provisions of Part II. of the Act, which refers to masters and seamen in the case of British vessels not registered in the United Kingdom which trade with the Colony.

By ss. 366 and 367 of the Act, Governors[1] of Colonies are enabled in certain circumstances to issue Proclamations with regard to emigrant ships which are given the force of law throughout the Empire under the Imperial Act.

The Imperial Merchant Shipping Act, 1894.—The general effect, therefore, of the Merchant Shipping Act of 1894 is to provide a complete code of laws for the regulation of British ships throughout the world, with certain definite and special exceptions in which colonial legislatures

[1] Though the power is given to the Governor, in a Dominion it would be exercised on the advice of ministers ; cf. New Zealand, *Parl. Pap.*, 1892, A. 1, No. 8 ; A. 2, No. 3.

are allowed to exercise the power of legislation in matters in which they may reasonably be considered to be better qualified to legislate than the Imperial Parliament. The provisions of ss. 264, 366, and 367 are obviously desirable, while the power of legislation as to vessels registered in the Colony cannot possibly be objected to, as it is open to an owner to register a vessel in any part of the Empire which he finds most convenient, and if he prefers on any ground to effect registration in a Colony it is only right that his vessels should, in merchant shipping matters, be subject to the legislation of that Colony. Nor can exception be taken to the right of a Colony to legislate for its coasting trade. That trade is carried on for the most part either by or in competition with vessels registered in the Colony, and it would not be fair to expose vessels owned and registered locally to competition by British vessels not subject to similar conditions.

Legislation in the Dominions.—On the other hand, it is natural that, with the growth of the merchant shipping of the Dominions and with the development of their importance, they should no longer remain content with the position thus defined in accordance with the Merchant Shipping Act of 1894. In several of the Dominions no attempt has yet been made to infringe the principles laid down in that Act: the Dominion of Canada [1] and the Colonies of the Cape of Good Hope, of Natal, and of Newfoundland have not yet passed any merchant shipping legislation over which any serious difference of opinion has arisen with the Imperial Government. For example, the Canada Shipping Act,[2] Ch. 113 of the Revised Statutes, 1906, provides in great detail for the regulation of shipping, but care is taken to limit the application of any provisions which are not in accordance with the Merchant Shipping Act to vessels registered in Canada or engaged in the coasting trade of the Dominion. Many of the powers, indeed, conferred by the Act apply generally to all vessels, and are not restricted in terms to vessels registered in the Dominion or engaged in its coasting trade; but such provisions merely repeat the provisions of the Imperial Merchant Shipping Acts, and there is no possible legal objection to this being done, while it is an obvious convenience to have any one Act a complete code of merchant shipping law as it applies in Canada. Indeed, much of the merchant shipping legislation of the Imperial Parliament would fail of its full effect if it were not enacted by the Dominion legislatures, inasmuch as the Imperial Government has not a staff of officials under its direction in the Colonies to superintend the carrying out of the provisions of the Merchant Shipping Act, although such superintendence is, by s. 713 of the Act of 1894, conferred upon the Imperial Board of Trade.

[1] Cf. *Parl. Pap.* Cd. 4355, pp. 4, 5.

[2] This Act was not indeed confirmed by Order in Council under s. 735 of the Merchant Shipping Act, 1894, but only because it is a mere consolidation, and the Acts which it consolidates were so confirmed.

Legislation in Australia and New Zealand.—In the case of the Dominion of New Zealand and the Commonwealth of Australia, however, differences of some importance have manifested themselves as to the real meaning of the Merchant Shipping Act of 1894 and the constitutional rights of the Dominions with regard to merchant shipping legislation. The questions are fully discussed in correspondence regarding the merchant shipping legislation in Australia and New Zealand, presented to Parliament in May 1905;[1] in the report of the Royal Commission on the Navigation Bill of the Australian Commonwealth, 1904, presented to Parliament in June 1906;[2] in a report of a Conference between representatives of the United Kingdom, of the Commonwealth of Australia and of New Zealand on the subject of merchant shipping legislation presented to Parliament in 1907;[3] and in correspondence relating to the proposed legislation of Australia and New Zealand on the subject of merchant shipping presented to Parliament in 1908.[4] The discussion has naturally turned on many points of detail, and is not free from ambiguity, but the legal questions which are at issue may be summed up as two:

First, how far has colonial legislation extra-territorial effect except where that effect is expressly given by an Imperial Act? and

Secondly, how far does the Merchant Shipping Act of 1894 limit the powers of legislation on shipping matters possessed by colonial legislatures?

The Extra-territorial Effect of Colonial Legislation.—(i) The first question is one which is rapidly growing in importance with the increase of the legislative activity of the Parliaments of the Colonies. It was laid down early in the history of the Colonies by the Law Officers of the Crown that the legislation of a Colony extended normally only to the territory and the territorial waters of that Colony. Several early instances of such advice are given by Forsyth in his *Cases and Opinions on Constitutional Law*, of which the most striking is perhaps the disallowance of the Ordinance passed by the legislature of Canada, at the instance of Lord Durham, providing for the banishment to Bermuda of certain rebels. The same principle has been repeatedly applied in later days, partly in the disallowance of Acts which have contravened this rule, partly in the passing of Imperial Acts to provide for cases in which it is desirable that colonial laws should have extra-territorial effect, or that colonial Courts should have power to enforce the jurisdiction of the Admiral. Such are the various Colonial Prisoners' Removal Acts, 1869 and 1884, the Extradition Act of 1870, the Fugitive Offenders Act, 1881, the Admiralty Jurisdiction Acts of 1849 and 1890, and the provisions of the Merchant Shipping Acts referred to above, and various other provisions providing for marine inquiries being held by colonial Courts of Admiralty.

[1] *Parl. Pap.* Cd. 2483. [2] *Ibid.* Cd. 3023.
[3] *Ibid.* Cd. 3567; also reprinted in New Zealand and Australia.
[4] *Ibid.* Cd. 3826, Cd. 3891, Cd. 4355.

Another good instance is the Act of 1881, providing that appeals from the Supreme Court of British Honduras should lie to the Supreme Court of Jamaica, in the preamble to which reference is expressly made to the necessity of Imperial legislation to produce this result, though in a later case, that of appeals from the High Court of the Orange River Colony to the Supreme Court of the Transvaal, local legislation alone was apparently considered sufficient,[1] while similarly appeals lay by local legislation from the Court of Swaziland to the Supreme Court of the Transvaal. Or again, s. 177 of the Army Act provides that colonial legislation as to colonial military forces shall have extra-territorial effect when these forces are serving beyond the limits of the Colony, even though they are on active service with Imperial troops, the Army Act itself only applying to them in so far as other provision is not made by the local legislation, which is thus given extra-territorial effect.

Nor is there wanting very clear judicial authority on the subject of the territorial limitation of colonial legislation. It was held by the Privy Council in the case of *Macleod* v. *The Attorney-General for New South Wales*[2] that a New South Wales law, the Criminal Law Amendment Act, 1883—s. 54 of which provided that "whosoever being married marries another person during the lifetime of the former husband or wife wheresoever such second marriage takes place shall be liable to penal servitude for seven years"—must so be interpreted as only to refer to the case of a second marriage taking place within the jurisdiction of the Court of New South Wales, that is, in the Colony itself; in that case a man was convicted of bigamy in New South Wales because he had married one lady in New South Wales, and in her lifetime another in St. Louis in the State of Missouri in the United States, and the judgment of the Court was reversed by the Privy Council, it being expressly stated that the jurisdiction of the Courts of New South Wales was confined within the territories of that Colony. The same principle has been repeatedly asserted even in colonial Courts. For example, it was held by the Supreme Court of New Zealand[3] that a colonial Act which provided for the arrest of a fugitive offender in New Zealand and his detention and handing over to a foreign Government was *ultra vires* the legislation of New Zealand, in so far as it authorised the detention and handing over of a prisoner beyond the territorial limits of the Colony.

[1] See Transvaal Ordinance, No. 12 of 1902, and Orange River Colony, No. 4 of 1902. This arrangement has been abolished by Transvaal Ordinance No. 22 of 1904 and Orange River Colony Ordinance No. 13 of 1904, Lord Milner's Proclamation No. 3 of 1904, repealed by Proclamation No. 4 of 1907, and appeals from the Courts of the Orange River Colony lie to the Privy Council direct.

[2] [1891] A.C. 455.

[3] *In re Gleich*, O.B. & F. (S.C.) 39; cf. also dicta of C.J. of High Court of Australia in *McKelvey* v. *Meagher*, 4 C.L.R. 265, at pp. 274 and 281, and my *Responsible Government in the Dominions*, pp. 83-85.

The Theory of Sir R. Stout.—It has, however, been recently contended by the Chief Justice of New Zealand in the case of *In re Award of Wellington Cooks' and Stewards' Union*[1] that colonial legislation has much more than a mere territorial effect. The question at issue there was whether an award by the New Zealand Court of Arbitration as to the minimum rate of wages to be paid to cooks and stewards and seamen on vessels trading between New Zealand and Australia was binding upon two steamship companies, the first, the Union Steamship Company of New Zealand, being registered in New Zealand with the head office and management in the Dominion and the vessels affected registered there. The other company, the Huddart-Parker Company Proprietary Limited, was a company registered in Victoria, where it had its head office and general management and where its ships were registered. The articles of the Union Steamship Company's ships were signed in New Zealand and the men were paid there, while those of the Huddart-Parker Company's vessels were signed in Australia, where also the men received their pay.

It was found, as a matter of fact, that the awards made by the Arbitration Court were not observed in full by the companies, inasmuch as they called upon the employees in some of their vessels to do work which, under the awards, should have been paid for as overtime and which was not so paid for. This happened while the ships were in Australian or Fijian ports and at sea, as well as when they were in New Zealand waters or harbours, and the Court of Arbitration sent a case for the opinion of the Supreme Court as to the extent of the jurisdiction of that Court.

The Chief Justice argued that the power of the New Zealand legislature which, under s. 53 of the Constitution Act of 1852, is to make laws for the peace, order, and good government of New Zealand, covered acts done beyond the territories of New Zealand. He held that unless this was the case many acts could not be properly dealt with, and that absurdities would occur. The peace, order, and good government of New Zealand could not be secured, he argued, unless there was power to punish acts done against the laws of New Zealand beyond the territories of New Zealand. Could a prize fight, he argued, between New Zealanders be fought with impunity on a foreign vessel four miles off the coast, because the New Zealand offenders were beyond the jurisdiction of the New Zealand Courts? Or could a duel between New Zealanders be fought with impunity on a foreign ship four miles from land? Further, it was not doubted by the Court that prisoners on board vessels while being conveyed from one prison in the Colony to another were within the jurisdiction of the New Zealand Courts, although the vessel might for a time be beyond the territorial waters.

Dealing with the case *In re Gleich* which had been determined by the Supreme Court of New Zealand and the case of *Macleod* v. *The Attorney-General for New South Wales*, determined by the Privy Council, he argued that

[1] 26 N.Z. L.R. 394.

the former case had been wrongly decided on the ground of the case of the *Attorney-General for Canada* v. *Cain and Gilhula*, decided in 1906 by the Privy Council itself.[1] The question there raised was whether the Alien Labour Act, 1897, s. 6, of the Dominion Parliament, which authorised the Government of the Dominion if an immigrant had been allowed to enter Canada contrary to the provisions of the Act, to cause him to be taken into custody and returned to the country whence he came, was *ultra vires* the Parliament of Canada. In that case the Act had been held to be *ultra vires* by Mr. Justice Anglin in the High Court (King's Bench) of Ontario, on the ground that the legislation of a Colony only applied within its territorial limits, and that an Act which authorised the expulsion of a person from any Colony required the exercise of force beyond the limits of the Colony. The Privy Council, however, held that every foreign State possesses full authority to expel from the State even a friendly alien if it considers his presence in the State opposed to its peace, order, and good government or to its material interests. This power had been delegated to the colonial Government by the British North America Act, 1867, which empowered the Government of the Dominion to legislate for the regulation of trade and commerce and naturalisation of aliens, and as the powers conferred by the British North America Act on these matters could not satisfactorily be exercised without giving the legislation some extra-territorial effect, the legislation of the Parliament of Canada in this case essentially had effect beyond the territory.

As regards Macleod's case, the Chief Justice argued that the case did not prove what it had been alleged to prove. The case was settled without raising the question whether the result would have been other had the accused been a citizen of New South Wales. The Naturalisation Act of 1870 recognises a distinction between the citizens of the Empire and the citizens of a Colony by permitting the naturalisation of an alien for the British Possession only, while leaving him a foreigner in any other part of the British possessions. Such a person, unless colonial legislatures had power to bind colonial citizens, would not be subject to the penal legislation of the Imperial Parliament.

The Chief Justice also alluded to the fact that a ship should be considered as part of the territory of the State whose flag she flies, and on that ground also he considered that the laws of New Zealand apply to persons on board a New Zealand ship as distinct from a British ship beyond the territorial limits of New Zealand.

The Chief Justice frankly admitted [2] that the doctrine which he laid down was a development of the doctrine of self-government, but he referred to the fact that it had been the glory of the British Constitution that, unlike the Constitution of the United States, it allows growth, development, and adaptation, and he held that the mere fact that a legislative or executive

[1] [1906] A.C. 652; 22 T.L.R. 757. Cf. *In re Adam*, 1 Moo. P.C. 460.
[2] 26 N.Z. L.R. 412, 413.

power had not hitherto been claimed under the provisions of the Constitution Act was no proof that that Act did not contain a potency of both legislation and administration hitherto not exercised in the Colony.

On these grounds he held that the award made by the Court of Arbitration bound New Zealand vessels even in Australia, and he also held that they did not bind Australian vessels, on the ground that the Arbitration Courts could not be assumed to deal with an Australian company or with Australian ships. It was possible for the Australian Parliament to legislate for those vessels, and the New Zealand Parliament had not, in his opinion, legislated in the Arbitration Act for foreign vessels owned by foreign owners even if it had power to do so, and the Act could not be considered as referring to such vessels. He stated, however, that if the Huddart-Parker Company's vessels were to engage in purely coastal trade and make contracts in New Zealand with seamen and others on board their ships for labour in coastal trade, then the arm of the New Zealand law was long enough to reach them.[1]

Objections to Sir R. Stout's Judgment.—It is impossible, with all respect for the Chief Justice, to accept as convincing his reasoning in this case. It is perfectly true that the authority *In re Gleich* could properly be disregarded by him, inasmuch as that case had in effect been overruled by the Privy Council in the case of *Cain* and *Gilhula*; but the Privy Council had in those cases been very careful in no wise to diminish the importance of the general rule that colonial legislation is territorial in effect. It merely held that in the particular case in which extra-territorial effect was given to legislation that effect was absolutely essential if the important duty of regulating aliens entrusted to the Canadian Parliament by the Constitution Act was to be carried out. Indeed, such exception can hardly be considered to require extra-territorial compulsion, for obviously if a man is placed on board a ship within territorial waters, the compulsion applied is done within the territory. It is, however, another and a very difficult question as to whether the fact of a man being placed legally on board the vessels and legally sent beyond territorial waters, as now held by the Privy Council, can be reconciled with the case of *R.* v. *Lesley*,[2] in which it was held that the detention on board a British vessel of a man who had been expelled by the Government of a foreign State could not be justified by the action of the foreign State, and that the master of the vessel would he liable for damages. Though the English Courts are not bound to follow the judgment of the Privy Council in such a case, it can hardly be doubted that if any similar case arose in future—for example, if a man deported from Canada sued the captain of the vessel on which he was

[1] This follows at once from s. 735 of the Merchant Shipping Act, 1894, which the C. J. did not cite.

[2] Bell's C.C. 220; 29 L.J.M.C. 97.

deported for damages for false imprisonment—it would be a sufficient answer that he had been legitimately removed from Canada by the Dominion Government, if the master were under an obligation by the law of the Dominion (as is now the case) to return him to the country from which he came.[1]

The attempt to dispose of the *Macleod* case is obviously unsatisfactory. The wording of the judgment there is perfectly clear, and the case is of great importance, because, according to English legislation, a man can be punished in England for the crime of bigamy wherever the second marriage took place, provided he is a British subject,[2] and the case therefore contrasted with and was decided because of the contrast with Imperial legislation. The New South Wales Parliament had indeed simply attempted to adapt to New South Wales legislation which, passed by the Imperial Parliament, had extra-territorial validity, and the Privy Council held that the attempt could not succeed.

As regards the attempt to hold that the law of a Colony applies to a ship, it is sufficient to remark, as was pointed out by Mr. Justice Edwards, that there is no ground whatever for the theory that the general colonial legislation applies on a colonial vessel. The Admiralty Offences (Colonial) Act, 1849, and certain sections of the Merchant Shipping Act, 1894, conferred on colonial Courts jurisdiction to enforce the law, not of the Colony, but the laws of England which are assumed to prevail upon every British ship within the Admiralty jurisdiction.[3] The argument that otherwise crimes would go unpunished is obviously very unsatisfactory, inasmuch as provision is already made by Admiralty jurisdiction for the punishment of all offences, and the only possible case of doubt is that of the British subject naturalised in a Colony. Colonial naturalisation can necessarily, partly from the limitation of the legislative power of a Colony, and partly from the express words of the Naturalisation Act, 1870, confer the status of British subject upon a person naturalised in a Colony only within the actual limits of the Colony. But as a matter of fact, this anomaly, which certainly exists, is not of much importance, for if he commits any offence on board a British ship in the high seas, he is subject, under s. 686 of the Merchant Shipping Act, 1894, to the jurisdiction of any Court in His Majesty's Dominions which would have the power to try the case had the crime been committed within the ordinary jurisdiction of that Court. Even the few cases in which a British subject naturalised in a Colony may escape punishment because colonial laws do not apply beyond the territory, may

[1] In Lesley's case the captain contracted to convey Chilian revolutionaries expelled from Chili by the Government to England, thus taking on himself the onus of assisting in their detention.

[2] 24 & 25 Vict. c. 100, s. 57.

[3] The question of Scottish vessels is very difficult, but need not here be discussed; see Dicey, *Conflict of Laws*, pp. 620, 621.

safely be neglected.[1] The case itself was not, it would seem, wrongly decided. Mr. Justice Edwards, who dissented from the dicta of the Chief Justice, held that the New Zealand company was liable on various grounds as the breaches of the awards were continuing breaches, and if it were required to show that they had taken place in New Zealand, it would be sufficient to show that they had been continued in New Zealand. At the same time, as the vessels were registered in New Zealand, and as the regulation of minimum wages is a legitimate part of merchant shipping legislation, the decision of the Court would in my opinion have been correct under s. 735 of the Merchant Shipping Act, 1894.

View of the Commonwealth Government.—The view taken as to the extra-territorial effect of colonial legislation by the Government of the Commonwealth of Australia[2] is much less pronounced than that expressed by the New Zealand Supreme Court. Mr. Garran's opinion,[3] which has been accepted by the Government of the Commonwealth, states that there may be cases in which it is necessary for the peace, order, and good government of a Colony that it should be able to pass a law to operate extra-territorially, and that the grant by the Imperial Parliament of plenary legislative power for the purpose of such peace, order, and good government is wide enough to sanction extra-territorial operation in such cases. No evidence is adduced in support of this assertion, which is, however, in keeping with the decision of the Privy Council in the cases of *Cain* and *Gilhula*. But it may be as well to point out a slight error in Mr. Garran's memorandum, in which he states that the limitation within the territorial limits of the Colony of the effect of colonial legislation is nowhere expressed in any colonial Constitution. It is sufficient to remark that the Constitution Acts of New South Wales, Victoria, and Queensland expressly refer to legislation within the State.

The Doctrine of a Continuing Act.—On the other hand, it must be admitted that of late a serious inroad has been made on the doctrine of the territorial limitation of colonial legislation by the doctrine laid down by the Privy Council in the case of the *Peninsular and Oriental Steam Navigation Company* v. *Kingston*, decided in 1903.[4] In that case the question which arose was the validity of a clause in the Australian Customs Act, which provided a penalty for breaking the seals of stores on which duty had not been paid. The Peninsular and Oriental Company gave instructions to their masters to break the seals and make use of the stores while beyond territorial waters, and they contested that

[1] A colonial naturalised person would similarly not fall under the Foreign Jurisdiction Act, 1890, nor under the Acts enumerated in Kenny's *Criminal Law*, p. 413, n. 1, or in *Parl. Pap.* Cd. 3524, p. 142.

[2] Similarly the Prime Minister of New Zealand, at the Merchant Shipping Conference of 1907, did not quote the judgment of the Supreme Court as correct.

[3] *Parl. Pap.* Cd. 3023, p. 61.

[4] [1903] A.C. 471.

as the offence was committed beyond the jurisdiction of the Commonwealth, it could not be punished in any Commonwealth Court. It was held in effect by the Privy Council that if a vessel entered any Australian port with a seal broken, that seal having been put on in an Australian port and afterwards broken whilst at sea, an offence had been committed which could be punished by the Australian Courts. It is thus possible, it would seem, practically to evade restriction of the legislative effect of colonial enactments by making the offence not one committed outside, but one committed by entering or being in the Colony after having committed an offence outside. It is difficult to deny, for example, that if a law were made by New Zealand making it a criminal offence for any man to be in New Zealand territory who had fought a duel outside, in view of the decision of the Privy Council in the case of the *Peninsular and Oriental Steam Navigation Company*, the law must be held to be valid, and advantage has been taken of this case by the Government of the Commonwealth with reference to clause 285 of the Commonwealth Navigation Bill. That clause provides that no deduction shall be made from the wages of any seamen earned out of Australia, nor shall any seaman be paid a lesser rate of wages outside Australia than is usual in voyages of a similar nature, by reason of his being entitled to a higher rate of wages while the ship on which he serves is engaged on the coasting trade. It is thus intended to secure that men engaged on vessels while coasting shall obtain Australian rate of wages. But on exception being taken to the provisions of s. 285, it is now proposed by the Government of the Commonwealth to alter the form of the clause so as to provide that the provisions of the Act as to wages shall not be deemed to have been complied with on the coast if deductions are made out of Australia by reason of the higher rate of wages having been paid in Australia, and as the Board of Trade have acquiesced in the proposal, which may be defended on the ground that it may be necessary to enable the provisions of the Act as to wages in the coasting trade which are *intra vires* being carried into effect, it may be taken that practically the clauses cannot be open to serious objection. At the same time the principle is one of a dangerous character and could easily be carried to excess.

The Effect of the Merchant Shipping Act, 1894, on Dominion Legislation.—(ii) Assuming the general limitation of colonial legislation to the territorial jurisdiction, the question arises to what extent the right of legislation as to navigation possessed by the Colonies exists independently of the rights expressly conferred in the Merchant Shipping Act, 1894. The question is of considerable importance, as it is asserted by Mr. Garran in his memorandum on the Commonwealth of Australia Merchant Shipping Bill [1] that colonial legislative power with respect to navigation and shipping exists independently of the powers conferred by the Merchant Shipping

[1] *Parl. Pap.* Cd. 3023, pp. 60–62.

Act of 1894, and this view has expressly been asserted by the Government of the Commonwealth of Australia, which has pointed out that the power of the Commonwealth Parliament to legislate as to navigation and shipping is founded on ss. 51(1) and 98 of the Constitution of the Commonwealth, and is quite independent of the very limited power of legislation given by s. 736 of the Merchant Shipping Act.[1]

As a matter of fact, the power to legislate for merchant shipping which is possessed by colonial Parliaments does not rest on any sections of the Merchant Shipping Act, 1894, and so far we may agree with Mr. Garran that the general power of legislation as to merchant shipping is not derived from ss. 735 and 736 of the Merchant Shipping Act. The legislative power of a Colony extends naturally and properly to legislate for all merchant shipping while within its territorial jurisdiction, but that power can only be exercised subject to the rule which affects all colonial legislation, that it must not be repugnant to an Imperial Act extending to the Colony. Such an Imperial Act is the Merchant Shipping Act of 1894, and all power as to merchant shipping is subject to the express provisions of that Act. As regards s. 735, Mr. Garran admits that without that section the legislature of a Colony could not repeal any clauses of the Act of 1894 which apply to a Colony. With regard to s. 736, Mr. Garran finds himself in difficulties. On the whole it is clearly intended, he says, to be an enabling, not a restrictive, clause, to grant to the Colonies, subject to conditions, certain new powers of legislation, but not to take away any existing powers. At the same time he admits that it is not easy to see what new powers it conferred. The clause is a re-enactment of s. 4 of the Merchant Shipping (Colonial) Act, 1869, which has been quoted above, and which repealed the protective clauses of the old navigation laws as they applied to the coasting trade of British possessions. The main object of the Act appears, he thinks, to be to enable the Colonies to legislate directly as to the vessels in which their coasting trade should be carried on. At the same time he feels that it is not easy to see what new powers it conferred, as even before 1869 a Colony in virtue of its general legislative power could make laws to regulate its coasting trade, provided that such laws were not repugnant to any Imperial Act extending to the Colony. Holding this view he asks how the substantive enactment extended their powers. It can hardly be contended, he says, that it enables a Colony to pass laws repugnant to an Imperial Act extending to a Colony. It may perhaps be argued, he says, as was suggested by the Imperial Crown law officers during the discussion in England of the Commonwealth Constitution Bill,[2] that it gives an extra-territorial operation to the laws of the Colony, but this is not expressed. At any rate it could not be supposed that the Imperial Parliament intended to

[1] *Parl. Pap.* Cd. 4355.

[2] Cf. Quick & Garran, *Constitution of the Commonwealth*, p. 364.

make a sweeping inroad upon the legislative powers of the whole of the self-governing Colonies of the Empire.

Objections to Mr. Garran's View.—Mr. Garran's difficulties are natural, but, on his theory, insoluble. As a matter of fact, before 1869 the existence of the Imperial Acts embodying the Navigation abolition of His Majesty's Government would have effectively prevented any legislation whatever by a Colony as to its coasting trade. The repeal of those restrictions in 1869 conferred in effect a very new and real power on a Colony, a power which goes beyond anything which its general legislative authority affords it, and which in fact confers upon a Colony an authority sufficient, subject to conditions, to over-ride an Imperial provision which would otherwise extend to vessels in the coasting trade. The meaning of s. 736 of the Act of 1894 would be quite illusory if it did not permit the colonial legislature to over-ride Imperial legislation otherwise applicable to vessels in the coasting trade. The only fair interpretation of the section, the one adopted by His Majesty's Government in the dispatch of the Secretary of State for the Colonies of November 29, 1907,[1] is to recognise that the Colonies have full power to regulate their coasting trade, whatever may be the general Imperial legislation on shipping questions. Moreover, to a certain extent it may be admitted that s. 736 does confer extra-territorial effect on colonial legislation. It is unreasonable to suppose that if a vessel, while engaged in coasting trade, leaves the territorial waters of a Colony, that vessel can be said to have ceased to fall under the regulations made by the Colony for the coasting trade. It is true that an interpretation of the Merchant Shipping Act which involves this absurdity was put forward by the Australian delegates[2] who came over to England in connection with the Constitution Act in 1900, but that interpretation was merely suggested by the delegates, and was not, in fact, given as their deliberate opinion, and His Majesty's Government, in their reply of March 29, 1900,[3] to the memorandum of the delegates, expressly stated that the power of the Commonwealth to control the coasting trade was given under s. 736 of the Merchant Shipping Act, 1894, which is not confined n its operation to the coasting trade while in territorial waters.

The powers conferred by s. 736 are fresh powers, wide and important, far surpassing any ordinary legislative power which a colonial Government possesses, and the conditions and restrictions laid down in that section and quoted above are signs of the recognition by the Imperial Government of the importance of the powers thus conferred and the necessity of defining strictly the conditions on which they can be exercised. As it stands, s. 736 requires, before any merchant shipping legislation affecting the coasting trade can take effect, the formal approval of His Majesty's Government at home, which is a safeguard that no legislation affecting a vital industry of the

[1] *Parl. Pap.* Cd. 3891, p. 7. [2] *Ibid.* Cd. 158, p. 15.
[3] *Ibid.* p. 24. Cf. also Dicey, *Law of the Constitution*, p. 99, n. 1.

Empire shall be passed hastily or without full notice. The only possible theory on which the Parliament of the Commonwealth can be exempted from the operation of s. 736 in its legislation on coasting trade is that the Commonwealth of Australia Constitution Act of 1900 is subsequent in date to the Merchant Shipping Act of 1894, and that it implicitly repeals, as regards the Commonwealth, the Act of 1894. That is the view apparently suggested in the 10th paragraph of Mr. Deakin's dispatch of June 15, 1908,[1] but it is sufficient to point out in reply that there is nothing in the Constitution Act to suggest that it was proposed to alter or affect the Merchant Shipping Act of 1894. The purpose of the Constitution Act is to effect a division of power between the Federal and the State Parliaments, and in the absence of express words it is impossible to interpret the general powers conferred as being anything in excess of what was formerly possessed by the State Parliaments. In some cases, undoubtedly, the powers conferred on the Parliament by s. 51 go beyond the powers possessed by any State Government, as, for example, the right to legislate for fisheries beyond territorial waters, but in such cases the extension of power is made by precise and unmistakable language. The same principle, in fact, must be applied as was applied to the position under the Constitution Act of Canada, under which, by ss. 91 and 92, certain exclusive powers were given to the Parliaments of Canada and of the Provinces. It was for a time argued in Canadian Courts that those powers excluded legislation by the Imperial Parliament itself, but it has finally been decided that the reference to the word "exclusive" is to the powers of the Provinces.[2] There have indeed been efforts in Canada to establish the doctrine that the Constitution Act enables the Parliament to repeal Imperial Acts applicable to Canada, but the arguments adduced are merely sentimental and do not deserve serious consideration. As regards Australia the case is determined by the discussions between Mr. Chamberlain and the delegates in 1900,[3] when it was made clear that the Colonial Laws Validity Act, 1865, must apply to the Commonwealth, and when that position was readily accepted by the delegates. Legally it is impossible to doubt the position, and it is surprising that Prof. Harrison Moore should have expressed any doubt on the subject. The doctrine of implicit repeal is a dangerous one and is not favoured by the English Courts.

Extent of Application of the Act of 1894.—If we accept, as I think we must, the fact that the Act of 1894 at once extends and limits the sphere of colonial authority in merchant shipping legislation, there remains the very important question of the exact extent of such limitation, which raises the problem as to how far the provisions of the

[1] *Parl Pap.* Cd. 4355.

[2] Cf. Lefroy, *Legislative Power in Canada*, pp. 208 *seq.*; Moore, *Commonwealth of Australia*, pp. 167 *seq.*; Quick & Garran, *op. cit.* pp. 347 *seq.*

[3] See *Parl. Pap.* Cd. 158, pp. 15, 23, 48.

Merchant Shipping Act, 1894, apply to the Colonies. On this point also Mr. Garran[1] is hopelessly at variance with the view of the Board of Trade as expressed in their solicitor's memorandum of October 14, 1904;[2] the latter adopts the principle that the Merchant Shipping Act is intended to be a more or less complete code of merchant shipping legislation for all British shipping, while the former considers it merely as an Act which in certain specified details applies to the Colonies, but generally has no such application.

Here, again, Mr. Garran's views appear to be rather forced. It is obvious that the Merchant Shipping Act must apply to all British vessels when abroad and when on the high seas. Mr. Garran would hardly agree that the Act did not apply, for example, in France or German New Guinea. But if that is the case the conclusion would appear natural that the Act applies also in the waters of a Colony, and if it does so apply, then, and indeed then only, have ss. 735 and 736 of the Act full force. These sections, it appears, in effect assert that the Act applies everywhere, and then mitigate that effect so far as is desirable by allowing colonial Parliaments to legislate for all registered vessels and for the coasting trade, even to the extent of altering the Imperial Act itself. Read in this light, the objection taken by Mr. Garran to the fact that the Act frequently does not say that it is of world-wide application loses its force. After all, a Merchant Shipping Act which was merely confined to territorial waters would be an Act of little value. The Act from its very nature must be world-wide except when specially restricted in operation.

Application of Parts I. and II.—As a matter of fact Part I. of the Merchant Shipping Act is admitted by Mr. Garran to apply to the Commonwealth. Part II., as to masters and seamen, expressly extends by ss. 260 and 261 to all British vessels registered in the United Kingdom, while certain provisions extend to vessels registered elsewhere, and a special power is given to colonial legislatures to extend any provisions which do not automatically apply to any vessels registered at, trading with, or being at any port in the Colony, such provisions then having the same effect as if enacted in the Imperial Act.

On the other hand Mr. Garran is clearly right in concluding that no inference as to the existence of any restrictions on colonial legislation can be drawn from this section. It has a definite purpose in giving extra-territorial effect to colonial laws, and without doubt the colonial legislature could without any express authority have legislated for any vessel which does not fall under the provisions of this part by virtue of ss. 260 and 261, but such legislation would, of course, have been merely territorial.

Application of Parts III. and V.—As regards the very important Part III. of the Act relating to steamships and surveys, etc., neither Mr. Cunliffe nor Mr. Garran seems to be convincing. The former considers

[1] *Parl. Pap.* Cd. 3023, pp. 59–62. [2] *Ibid.* Cd. 2483, pp. 56–63.

that legislation as to surveys can only be passed by a Colony as regards registered vessels, but that is to ignore the provisions of s. 736 as to coasting trade. The latter argues that the colonial legislatures can add to the conditions laid down by the Imperial Parliament, provided that such additions are not inconsistent with the Imperial enactment. Technically this is doubtless correct, but it is practically difficult to decide precisely what additions would not be in substantial disagreement with the Act. This view of Mr. Garran's, however, is of special importance in the light of his opinion that Part V. of the Act, which deals with danger signals, safety appliances, and adjustment of compasses is not in force in the Colonies. For the chief difficulty in reconciling the views of the Imperial Government, the shipowners, and the Commonwealth Government rises out of these provisions. The Bill before the Commonwealth Parliament assumes that the Parliament has power to legislate as to surveys, as to safety appliances, and as to adjustment of compasses so as to overrule the provisions of the Merchant Shipping Act, even though the ships to which the legislation so to be applied are merely over-seas vessels and do not take any part in the coasting trade. The shipowners [1] contend that if on these matters they satisfy the rules of the Board of Trade under the Imperial Act, they should be exempt from further legislation, while of course they have no objection to any provisions to secure the carrying out of the Merchant Shipping Acts. This they deem to be proper in all cases of vessels trading between England and Australia, whether or not they coast in Australian waters. The Imperial Government draws a line between vessels which coast and those which do not, and in the latter case alone consider that the fulfilment of the Imperial requirements is all that is necessary.

The difficulties of Mr. Garran's position become very clear on consideration of s. 457 of the Act, which lays a penalty on sending a British ship to sea in an unseaworthy condition. This section is expressed in the same form as the other clauses in Part V., and it is only on the restriction on the right of taking action under the clause, where it is provided that the consent of the Governor of a British Possession is required, that any reference to the Colonies appears ; the fact being that the whole part is general except when the language of the clause refers definitely to a port in the United Kingdom. It may be added, too, that if the theory of the Commonwealth Government were correct, the British ship in any Colonies would be exempt from all legislation, as many Colonies have passed little legislation on the subject, being content to rely on the Imperial Act. The Commonwealth Bill on this point is frankly *ultra vires*, for it confers in all cases on the Minister and not on the Governor the power to allow a prosecution,[2] a distinction decidedly important, as the Governor on a matter of Imperial interest is

[1] Cf. their views, *Parl. Pap.* Cd. 3567, pp. 169, 170, with Sir W. Lyne's reply, *ibid.* pp. 171, 172.

[2] So the New Zealand Act, No. 96 of 1903 (Consolidated Statutes, No. 178), s. 224(3).

not bound to act on ministerial advice. The Bill can only be justified so far as it relates to coasting vessels and vessels registered in Australia, and this point alone is sufficient to disprove the theory adopted by Mr. Deakin [1] that in no point does the Bill repeal or vary any part of an Imperial Act applicable to the Commonwealth.

Application of Parts VI., VIII., and XI.—Parts IV. and VII. of the Act, dealing with fishing boats and delivery of goods, do not apply to the Colonies, while Part VI. is especially applied by the wording of ss. 465 and 478, the former of which Mr. Garran has apparently overlooked. Part VIII., as to the liability of shipowners, is expressly extended to the Dominions by s. 509. Part IX., as to wreck and salvage, is mainly applicable to the United Kingdom, but s. 523 ascribes to the Crown all wreck, wherever found, and by the Civil List Acts the proceeds should be paid to the Imperial Exchequer. They have, however, been surrendered by Imperial Acts,[2] in the case of New South Wales, Victoria, and Queensland, and are not, in fact, received from the other States, so that the appropriation of the proceeds by the Commonwealth Bill is open to no reasonable objection, though legally it would seem to be *ultra vires*. But the appropriation has already been made by New Zealand,[3] and the old reservation is no more than an accident. Part X., as to pilotage, only applies to the United Kingdom, leaving a free field for local legislation. Part XII. deals with the Mercantile Marine Fund, while Part XIII. as to legal proceedings admittedly extends to the Colonies.

Application of Part XI.—On Part XI., as to lighthouses, there is again a difference of opinion. Mr. Garran characterises "as an extraordinary inroad upon colonial powers of self-government" the statement of Mr. Cunliffe that ss. 670–75 restrict the power of colonial legislatures to raise light dues, and the New Zealand Act [4] ignores these provisions. But there is some misunderstanding about this: the purpose of the Act is to ensure the payment of the dues by vessels which never come into the jurisdiction of a Colony, and if a Colony relies on local legislation, she cannot enforce payment save on vessels which actually call at the ports. In such cases the dues can, I think, legally be levied; the Colony in effect says that if you trade with our ports you must pay for conveniences like lights, and so far I agree with Mr. Garran that it is impossible to restrict the right of a Colony to collect dues on its own authority.

Application of Part XIV.—Finally, Mr. Garran denies that s. 713, in Part XIV., which is supplemental, ascribing to the Board of Trade the general superintendence of merchant shipping and seamen, can apply to

[1] *Parl. Pap.* Cd. 4355, p. 7.

[2] See 18 & 19 Vict. c. 54 (New South Wales), c. 55 (Victoria), and the Queensland Letters Patent of June 6, 1859, confirmed by 24 & 25 Vict. c. 44, s. 3.

[3] Act No. 96 of 1903, s. 264.

[4] No. 96 of 1903, ss. 287–290. The effect of these sections is strictly limited to vessels which actually call on business at New Zealand ports.

the Colonies. But that denial is certainly wrong, as it ignores provisions like that of s. 465 as to the power of the Board to order shipping inquiries in any place, of s. 474 as to the return of a cancelled certificate, of s. 672 as to colonial light dues, and of the first part of the Act as to registration, in all of which matters the Board appears as a general supervising authority. The practical result of Mr. Garran's view is seen in the determination of the Commonwealth Government to keep in the Bill a clause prohibiting the use in Australia of a certificate cancelled in the Commonwealth and then re-issued by the Board of Trade.[1]

Besides these theoretical arguments, there have been urged, notably by Sir William Lyne at the Navigation Conference of 1907,[2] the argument that legislation beyond the limits now urged by His Majesty's Government has been sanctioned by the Secretary of State. The argument, however, is erroneous: it is true that there are many clauses in colonial Acts undoubtedly *ultra vires*,[3] but the policy of the Imperial Government declines to disallow an Act merely because part of its provisions are *ultra vires*, and that position has been approved by both the late Prime Minister[4] of New Zealand with special reference to shipping legislation and generally by the High Court of Australia.[5] The Act may be so administered as to lead to no illegality, even technical, and the inconvenience of disallowing an important Act is almost prohibitive.

Desirability of Maintenance of Existing Position.—Even, however, if we accept the position of the Imperial Government as legally sound, it may be argued that the matter is not one of law but policy, and that the law should be altered if it interferes with colonial legislation. The reply to this argument is that the law permits to the Colonies a very wide range of legislative activity. Such important questions as those of pilotage, conditions of carriage, wreck and salvage, fishing-boats, are open for any action they desire to take; on other topics such as the relation of master and man, surveys, life-saving appliances, compasses, etc., they have legislative power in full as to all coasting vessels and all vessels registered in the Colonies, and all foreign vessels in territorial waters, while they can re-enact any provisions of the Imperial Act they think fit. The one claim made by the Imperial Government is that vessels which do not coast should, if registered in the United Kingdom, be deemed satisfactory if they obey the laws in force in the United Kingdom, and, since it is recognised that every Colony has full power to detain an unsafe vessel under the Imperial Act, it can hardly be held that the claim is unreasonable.

[1] Clause 369 of the Australian Bill as it stands is general in its application, and so is *ultra vires* as regards vessels not covered by ss. 735 and 736 of the Merchant Shipping Act, 1894. Cf. *Parl. Pap.* Cd. 4355, pp. 23, 24.

[2] *Parl. Pap.* Cd. 3567, p. 62, where also will be found my reply.

[3] See *e.g. Parl. Pap.* Cd. 2483, pp. 1, 6, etc.

[4] *Ibid.* p. 4.

[5] 1 C.L.R., 117, 118.

In the case of a foreign vessel no more can well be insisted upon without serious risk of diplomatic friction.

The situation is unsettled, and in all probability some illogical but convenient compromise will end the immediate difficulty. But the question illustrates very effectively the great difficulties of the present Imperial constitution, when no federal authority exists, and the Dominions have begun to question the authority of the Imperial Parliament to pass enactments applicable to the Empire as a whole, for that in effect is the spirit which produces the ingenious but unconvincing attempt of the Law Officer of the Commonwealth to prove that the Imperial Shipping Code has scarcely anything to do with the Colonies.

The New Zealand Act of 1903.—In conclusion three points must be briefly mentioned. The first is the New Zealand Act, No. 96 of 1903, which, assented to in 1905 and consolidated in 1908, forms the most advanced piece of colonial merchant shipping legislation in existence. Most significant perhaps are the provisions regulating the intercolonial trade,[1] and it appears from later dispatches that the Dominion Government still propose to maintain this policy. Yet it can hardly be doubted that the legislation is *ultra vires* despite the defence of it by the Chief Justice cited above. At the same time it must be noted that s. 2(2) of the Act expressly provides that the Act is to be so construed as not to exceed the legislative powers conferred on the General Assembly by the Constitution Act, so that strictly speaking the Act is not *ultra vires*, as under this rule the intercolonial clauses must refer only to registered vessels. But the form of legislation is most unsatisfactory.

The Meaning of Coasting.—Secondly, it has been assumed above that coasting has the sense ascribed to it in the ninth resolution of the Conference of 1907,[2] and includes the trade done by a vessel which, coming from, say, England, picks up passengers or cargo at one part of the Colony and puts them down at another. This view seems to me the only reasonable interpretation of the word, but it is fair to say that exception has been taken to this view by both the Solicitor to the Board of Trade in 1898,[3] and by the shipowners in 1907.[4] But while no doubt a vessel sailing from England and only incidentally trading on the coast in Australia can hardly be said to be a coasting vessel, the power given by s. 736 of the Merchant Shipping Act, 1894, is to regulate the coasting trade, and any vessel which trades from port to port must be said while doing so to be in the coasting trade. Nor is it possible to deny the force of the complaints of local vessels against competitors from without who can use Lascars and pay lower wages, even although there is some weight in the counter-argument that to demand the payment of Australian rates of wages is unreasonable as regards the whole crew, since only part of it is needed for the coasting trade.

[1] See *Parl. Pap.* Cd. 2483, pp. 36, 37, 38, 42, etc., and Cd. 4355, pp. 18, 19.
[2] *Ibid.* Cd. 3567, p. v. [3] *Ibid.* Cd. 2483, p. 7. [4] *Ibid.* Cd. 3567, p. 78.

Section 5 of the Commonwealth Constitution Act.—Thirdly, it will be noted that no reference has been made in this discussion to s. 5 of the Commonwealth Constitution Act, 1900. That section is a remarkable one and puts in force on all British vessels, save ships of war, "whose first port of clearance and whose port of destination are in the Commonwealth," the laws of the Commonwealth. Messrs. Quick and Garran[1] have explained the enactment on the lines suggested by the Commonwealth Constitution delegates in 1900,[2] and think that it is required to extend to vessels beyond the three-mile limit the navigation laws of the Colony. But this is a very inadequate account of the section, for, as shown above, all coasting vessels and all Australian registered vessels fall under the Commonwealth navigation laws without reference to s. 5 of the Constitution Act. The section applies to all laws and creates an Australian vessel of the type postulated for New Zealand by the Chief Justice, a vessel on which all the enactments of the Commonwealth apply. But this point is irrelevant to our purpose, and it must suffice merely to point out that it is impossible to say what ships fall under the law, for what does "first port of clearance" and what does "destination" mean? Does the section apply only to vessels which merely trade on the Australian coast, or also to vessels which take voyages to Fiji and the Western Pacific or to New Zealand? Nobody will know until the Privy Council or High Court decides.[3] Moreover, what a curious position is set up, for the vessel will in all matters where there is no Commonwealth legislation continue, when out of territorial waters, under English law, and in particular under the English criminal law! More curious still, however, is the reasoning by which the delegates[4] in 1900 supported the clause, for they argued that one of its merits was that it avoided a change from one State law to another as the vessel passed from the territorial waters of one State to those of another, ignoring the fact that in the territorial waters the Commonwealth law would without this clause equally apply and equally over-ride the State law, while in all matters of exclusive State legislative competence the old change of laws remains. Apparently the delegates had a vague idea that the clause puts the ships under the complete legislative control of the Commonwealth, whereas it merely places them under the control of the Commonwealth so far as it can legislate—a very different matter.

[1] *Op. cit.* p. 361. [2] *Parl. Pap.* Cd. 158, p. 15.

[3] Since this was written, the High Court's decision as to the meaning of the section in the case *Merchant Service Guild of Australasia* v. *Archibald Currie & Co. Proprietary Limited*, 5 C.L.R. 737, has been reported.

[4] *Parl. Pap.* Cd. 158, p. 16. The Imperial Government seem to have taken the argument seriously.

THE GREAT JURISTS OF THE WORLD.

VII. VICO.

Part II.

(*Continued from* No. XVII. *p.* 92).

[*Contributed by* Michael H. Rafferty, Esq.]

The substance of the *De Constantia Jurisprudentiæ*, the sequel to the *De Uno*, is incorporated in the *Scienza nuova*. It will therefore be sufficient and convenient to refer to it incidentally in speaking of the latter work. Our remarks will be confined to a succinct statement of the general scope of Vico's principal treatise and of some of the more important questions arising out of it.

The *New Science* is an extremely difficult book to analyse. Encumbered with strange and often grotesque illustrations of historical doctrines, uncouth in language, eccentric in turns of thought, and, in most editions, badly printed, the *magnum opus* of Vico presents an aspect so forbidding that nothing less than originality of the highest order can explain its survival and frequent republication. Its formal defects are attributable, in part, to the speed with which Vico wrote—he prepared the second edition in four months—and in part also to his disregard for purity of language. In many letters are found expressions of his contempt for lexicons and current works of reference. His method seems to have been to meditate long and carefully and then to hurriedly commit the result to paper, under the pressure of an intellectual fervour which a contemporary describes as akin to the *furor poeticus*. Corrections, when he made them, related invariably to the substance of his work, and rendered it more obscure than before.

In spite of the scholastic stamp of Vico's philosophy, some of his modern admirers have claimed him to be a positivist. Professor de Luca, in his *Dinamica delle Forze sociali*, has a chapter entitled "Vico e Comte," and an introduction to a recent reprint of the *Scienza nuova* is devoted to showing its persistent positivism. The points in which our author is supposed to betray his positivist tendencies might be more aptly indicated as proof of the modernity of his temper. Prominent among them is his historical scepticism, which raised a storm of protest among his contemporaries. Although Vico had found the methodic doubt of Descartes repugnant, and had devoted a considerable part of his dialectical skill to

showing its absurdity in philosophy, in his historical studies the preliminary rejection of traditional beliefs is so absolute that he might be thought a disciple of the French philosopher. No writer prior to Vico had attempted to question the general credibility of early history and tradition to an extent at all comparable with that to which he went in the *Scienza nuova*. There had, of course, been critical treatises on special documents or dealing with the traditions of particular nations.

The *Declamatio* of Lorenzo Valla successfully exposed the forgery of Constantine's donation. The efforts of Gerard Jan Vossius and Pico della Mirandola to unite in a harmonious design Christianity and the fables of classical antiquity may, perhaps, imply an intelligent distrust in the surface meaning of history. Later, Heinrich Loriti began a series of attacks on the accepted accounts of early Rome which the Dutch historians of the seventeenth century vigorously continued. But the radical criticism of Vico went much further. The result of his views was to sweep away the entire body of traditions which had been accepted as the true account of human affairs anterior to the Peloponnesian and the second Punic Wars. "Thucydides," he says, "informs us that, up to his father's time, the Greeks knew nothing about their own past. What then could they know of the past of the Barbarians, they who, alone, have made it known to us, and what shall we think of the past of the Romans, a people wholly preoccupied with agriculture and war, when Thucydides makes us this confession in the name of the Greeks who so early became philosophers."

"Livy," he adds, declares that after the second Punic War, "he will write Roman history with greater certainty," but even then that historian is in doubt as to many important matters. "All that has come down to us concerning Pagan antiquity previous to the times we have indicated is uncertainty and obscurity. We do not therefore hesitate to boldly enter into it as into an unowned field which belongs to the first occupier (*res nullius quæ occupanti conceduntur*). We shall not fear to infringe the rights of any one when, in treating of these matters, we shall not agree with or shall even be opposed to, the opinions hitherto accepted as to the origins of civilisation." These bold declarations forcibly recall the proposal of Descartes to empty the mental "apple-basket." It is, of course, true that the critical attitude of Vico towards the Bible was in marked contrast with the freedom he displayed in dealing with profane writings. Most of his apologist, and especially his countrymen, have attributed this singular conservatism to political or other ulterior motives. Signor Pio Viazzi, for instance, writes that Vico's profession of orthodoxy "ha quasi sempre tutta la forma di un voler parere più che altro." Passages in this *Scienza nuova* have been pointed out in which Vico appears to recognise the artificial character of the hard-and-fast distinction he professed to see between the history of the Hebrews and that of other peoples. When he says that "poetry was the earliest method of expression among all peoples, including the Jews," or when he seems to entertain a

doubt as to whether the Jews of the age of Abraham practised human sacrifice, these apologists see the half-suppressed wish of a free-thinker to submit the Bible to the rules of literary criticism. A simpler, and surely sounder, explanation of Vico's peculiar attitude may be found in the *milieu* in which he wrote. When the Pentateuch was still regarded as the oldest book in the world, when the spade of the excavator and the patience of the decipherer had not yet revealed the fact that the prophets and even Abraham lived in a world permeated with literary culture, when nothing was known of the progress in art and mechanical science made by the ancient empires of the East, the high literary development, the philosophic conceptions, and the moral enlightenment embodied in the Old Testament were sufficient, apart from the sanctions of ecclesiastical authority, to cause the history of the Jews to be looked upon as entirely *sui generis*, having nothing in common with that of the Gentile world. The eighteenth century had, of course, its Bayles and its Voltaires who were prepared to gibe at the inconsistencies of Scripture and to attack with ironical reverence the "respectable prejudices" of their times. But the object of such writers was political rather than literary. Like Candide, they felt that, primarily, they must cultivate their garden and help to pluck out the weeds with which society was overgrown rather than confine their efforts to the humble objects of mere scholarship. When they attacked the accepted historical interpretation of the Bible, it was because they, however mistakenly, regarded religion as the enemy of social reform, and not from any desire to furnish, in the light of advanced historical knowledge, a more acceptable exegesis. Hence the crudeness of Voltaire and the Deistic writers. Their criticism had no permanent value. It was not intended and could not therefore assist to form the essentially modern conception of the Scriptures with which we now are so familiar that it is hard to realise the standpoint of an age which was ignorant of their composite character and which held it little short of blasphemous to admit that they had undergone change and revision.

The position of Vico towards the Bible was natural and almost unavoidable, because no rational view of it had as yet been suggested which a Christian might be expected to adopt. The very fact that Vico "shelved" the questions of Biblical interpretation and did not attempt to furnish any explanation of Hebrew tradition may, perhaps, indicate some suspicion on his part that the current method of dealing with the Bible was unsatisfactory. He might readily have attempted an explanation on the teleological lines of the *Discours sur l'Histoire universelle*, or at least have proposed a method by which his philosophy of history might be "reconciled" with the co-existence of a separate Hebrew dispensation. This he did not do. His attention was absorbed by the vast fields of speculation in which he traced the story of the savage races which had not yet learnt to distinguish good from evil and who were outside the process of divine selection

described in the Book of Genesis. It is not unreasonable to attribute to a man of his extraordinary historical intuition some glimmering of the true scope of the Bible and its historical value. The passages which are quoted to show that Vico did not really believe in the special character of the Bible ought more correctly to be regarded as manifestations of the independence of his thought and of the genius which, in many respects, made him so superior to the prejudices of his time. If the exclusion of sacred history from his plan led to contradiction, he was, we may believe, unconscious of the fact. His scientific instinct, if the expression be allowable, enabled him to put aside when necessary assumptions and prejudices which might have hindered his general conclusions.

> Der Mensch in seinem dunkeln Drange
> Ist sich des rechten Weges wohl bewusst.

The historical scepticism of Vico, like the methodic doubt of Descartes, was merely a clearing of the ground for the construction of his positive system. The conviction underlying the *New Science* was, in the words of Dr. Klemm, the most recent expositor of Vico, that "it is possible to represent the life of peoples in accordance with scientific principles, or to establish a general science of peoples (*Völkerwissenschaft*)." To create this science Vico thought, however, that the Cartesian contempt for erudition and its endeavours to build all knowledge on the facts presented by consciousness were quite inadequate. The science of peoples must avail itself of two distinct lines of investigation. It must rely on philosophy for absolute rational knowledge, for all truths which can be deduced from pure reason, but it cannot make fruitful use of the results of speculation unless at the same time it is acquainted with philology. By the latter term Vico understood all knowledge other than that derived from philosophy. History, literature, general experience, "la cognizione delle lingue e dei fatti dei popoli" compose philology and are material for systematic study. By them the data of deductive reasoning are to be checked, and they in turn are to receive a new interpretation in the light of rational principles. Too great reliance on abstract ideas on the one hand, and the lack of a co-ordinating power on the other, were dangers which Vico believed could be obviated by his combined method of study. It is probable that the conception of this method was derived from his doctrine that history is the unfolding of the eternal idea of God. All external events lie, he believed, inevitably determined, in the Divine mind and might be equally well known by us without observing their occurrence in time and space were we sure that our intelligence did not deceive us by allowing us to mistake figments of our own brains for a revelation of the designs of Providence.

It would be useless and difficult to describe the peculiarities and inconsistencies of this semi-Platonic doctrine. Suffice it to say that the notion of human development being an inevitable outcome of human nature—one

of Vico's most fruitful ideas—and the metaphysical doctrine of the pre-existent Divine plan are constantly clashing in the *Scienza nuova*, so that the author is often driven to speak of Providence as if he meant merely the conception of Providence present in the thought of individual men. In other words, he sacrifices unconsciously the idea he adapted from the schoolmen in favour of his own original theory. Providence, instead of remaining outside the laws of social growth and imposing itself on the world of fact, became part of a human process influencing mankind from within. The variations in Vico's view of Providence afford good proof that, although he wore so many of philosophy's cast-off garments, he had begun in reality to think in a modern way.

In a note entitled *Tavola delle discoverte generali*, Vico summed up the main points which he claimed to have established in the *Scienza nuova*. One of them was "Una storia ideale eterna commune a tutte le nazioni." This idea of a "storia ideale" as understood by Vico was that on which sociology is based. Sociology, it may be said, is, in a sense, an attempt to write history briefly, more briefly than any record of events would permit. In analysing recorded facts, in observing existent social phenomena, in classifying the results and attempting to state the conditions of social stability and social progress, sociology is but applying the method common to all the sciences, and, in proportion as the general formulas it lays down are found to cover facts hitherto unobserved, approaches more nearly to the condition of an exact science. To know that historical phenomena are never of a casual character, that general propositions may be deduced from them when rightly understood, is of fundamental importance for establishing a theory of human action. If sociology is possible—a supposition denied by many—if the gap in the scientific *Weltbild* where man stands, with his complex motives and actions, is to be filled up, it must be admitted that the conception of the succession of historical events as governed by fixed laws was one of the greatest thoughts which man has ever had. Vico was the first who gave clear expression to this thought. By "storia eterna" he meant an explanation of history by reference to universal historical laws. This was the central purpose of his great work, and he was justified in calling his science "new" as fully as any discoverer was ever justified in claiming originality. Darwin's theories were none the less new because the work of Lamarck and Saint Hilaire had helped towards their formation, nor is Lavoisier denied the merit of his chemical discoveries because Priestley had contributed to them. We may similarly recognise that Plato's *Republic*, the *De Civitate Dei* of Augustine, the *Discorsi* of Machiavelli, and possibly, Bodin and Campanella, helped in various ways towards the formation of Vico's conception of social law. The city depicted in the *Republic*, of which "perhaps in heaven there is laid up a pattern for him who wishes to behold it," Vico did not seek for, because he recognised that it was confined to the region of speculation, but, with the thought of such a city in his mind, he was not improbably

led by his belief in a Providence inherent in the earthly order of things to suppose that the apparent confusion and incoherence of history might in reality conceal the outline of an unknown Divine scheme. The frequent reference to Augustine found in the *Scienza nuova* renders it likely that the *De Civitate* had a considerable influence on Vico's historical speculations. No doubt the Providence of Vico was far removed from that which "rules and governs all earthly events, but of which we are not to question the justice, though we may not see its motives." The narrow dualism of the *gloriosissima civitas* and the *civitas terrena* was implicitly rejected by Vico when, as we have seen, he refused to enter into the conventional distinction between Jewish and Gentile history; the attempt to fit preconceived theological notions into historical generalisations did not attract him. But these facts do not render it less sure that Vico's theory was helped by Augustine's conception of the divine direction of human destiny and by his arguments against the Greek necessity and fortune as explanations of history. Machiavelli's doctrine of the essential depravity of human nature left no trace in Vico's speculations; the local bias everywhere traceable in *The Prince*, the advocacy which contributed so largely to the œcumenical fame of the Florentine politicist, have no reflection in the scientific detachment of the *New Science*. But when Machiavelli writes: "All things in the world, at all periods, have an essential correspondence with past times," when he systematically employs historical parallelism in the arguments of the *Discorsi*, he approaches appreciably to Vico's conception of historical law, and, in attempting to base his investigation on the common congenital character of man, seems to have partly seen the necessity insisted on by Vico, of establishing the psychological foundation of historical science.

It is interesting, in noticing writers whose influence on the *Scienza nuova* is apparent, to refer to a predecessor in the scientific study of history who, although he cannot have been known to Vico, seems to have anticipated him to a remarkable extent by more than three centuries. Ibn Khaldoun, whose ancestors had taken part in the Moorish conquest of Spain, died at Cairo in 1406. His passion for political intrigue made his life one of vicissitude. Sent on a diplomatic mission by the ruler of Tilimsaan, he tarried four years on the road in order to write his Prolegomena, the general part of *The Book of Examples* (Kitab-el-Ibar). The prose of this work is of the kind Matthew Arnold called *Asiatic*, and it is marred by lack of balance, but it contains a philosophy of the history of the Moslem peoples far in advance of anything in European literature prior to Vico.

"History," says Ibn Khaldoun, "has for its object to treat of the formation of social groups, of the conditions to which mankind is exposed, of the refinement of customs, of family and tribal feelings, of the idea of national superiority which leads to the founding of empire, and, finally, of the changes which the very nature of things impresses on the character of society. It is a self-contained science having for object civilisation. . . . The part in which

we deal with this topic contains a new science remarkable alike for originality and utility." These passages and such headings as "Of the differences of races, and of the countries which they inhabit"; "Of the forms of government of the Khalifate and *of such forms as are essential in every state*," are sufficient to show how advanced were the tenets of the Arab writer.

With his conception of social law clearly in view, Vico proceeded to deal with problems which may be divided into two groups. In the first he attempted a critique of historical materials and an inquiry into the causes, the laws, and the ends of social development. In the second, he inquired into the psychic factors which are discoverable in all communities and have everywhere a common value, *e.g.* language, myth, and custom. Few modern writers would approve of the importance Vico gives to the study of language and myth for the purposes of social science. They are too concerned with that aspect of change which Giddings characteristically described in the dictum, "Progress is at bottom an economic phenomenon," to give prominence to a philosophy of mental development. The modern ethical school of sociology is, nevertheless, following the example of Vico in its attempt to work out a theory of evolution from egoism to altruism, and it is, moreover, a fairly common proceeding in modern social science to try to explain a phenomenon, *e.g.* interest, by the history of the word by which it is signified.

"Man," says Vico in the *Scienza nuova*, "has certainly made the civil world." Providence, immanent, as it were, in the human race, co-operated in the making, but, as has been seen, the "Provvedenza" of Vico bore little resemblance to the Providence of Bossuet's *Discours*. It is, in the *Scienza nuova*, a deduction and not a postulate, a generalisation from the ideas found, by Vico, to underlie the whole of human history. When man emerged out of the darkness into which he was plunged after the flood, he bore upon him all the traces of the brutishness which his sins had developed in him. Without family, without form of speech—*mutum et turpe pecus*—a prey to wild impulse and illusion, the shaggy forest-dweller was led towards better things under the influence of two main factors—Force and Reason. At first the only right was that of the strong. The physically superior compelled the weak to labour for them, to hew wood and draw water. Physical superiority it was, too, which led to the suppression of promiscuous sexual intercourse; the strong man selected his mate and jealously guarded her from his weaker fellows. This was the earliest form of marriage, and with marriage the family came into existence, children of sure parentage to whom their father naturally hoped to transmit the fruits of his labour, his slaves and his lands. For Vico, as for Maine, "the power of the strong man was the principal formative cause of social progress." Inheritance implied division of land and the absolute power of its owner, *dominium*. But mere force, although so potent an agent, could not achieve the rudiments

of civilisation. Man's mind is moved to some sort of supernatural belief in all times and places. Vico is not consistent in explaining the origin of this belief. At times it arises, he says, from mere fear of natural forces; in terror of the thunder—"fu fantasticata una divinata in cielo che fulminasse." At others, the conception arises from man's realisation of his own littleness or from conscience, "coscienza del' malfatto." But whatever its cause, the belief became a means by which man was civilised. Even when his perversity had led him to adore false gods, he, in his ignorance, attributed human passions to them, sought to know their will by auguries and to pacify them by prayer and sacrifice. His whole life became associated with the supernatural; marriage became a sacrament; wills were placed under the protection of the gods; the priest and the legislator were identified. It was because, in the beginning, the family, legal rights and virtue itself were thus founded on religion that Vico called his system "una teologia civile ragionata." The persons who resorted to the practices of religion were, naturally enough, those who had profited by the exercise of superior strength and skill. He who already possessed a dwelling, a wife and a family, was the first to build an altar or a sacred grove where the unseen power might be propitiated, where the firstlings of his flock were brought as an offering. "I Padri come più sperimentati dovettero essere i Sapienti: come più degni i Sacerdoti: come posti in una somma potesta . . . i Re delle loro famiglie." Worldly wisdom, supernatural relations, and absolute temporal authority were the rightful prerogatives of the paterfamilias; his despotic power was beneficent in its results. The savage passions of the group he held in subjection were curbed and mollified. After death his services were recognised and he became the hero and the demi-god. The mediæval view of pagan mythology, according to which its gods were baseless myths, or, at best, incarnations of evil spirits, was false and shallow. The whole world of ancient fable is imbued with meaning and filled with real men. "We have in it the civil history of the earliest peoples," material from which to fashion a true conception of the mind and history of primitive man, whose mythopœic faculty is everywhere evident. The method by which he proposed to utilise mythology is, to a great extent, approved and followed by recent writers, but the fantastic interpretation of specific myths which we find in the *Scienza nuova* is liable to hide its substantial soundness. His attempt to show that the twelve great gods of Greece represent as many epochs of history, or that Juno, for instance, symbolised the history of marriage, are to us, of course, absurd, and we are surprised, when we have read it, to find him, nevertheless, as fully aware as any modern writer of the "automorphism" of primitive races: "L'uomo ignorante, cio che non sa, estima della sua propria natura."

Early languages were, Vico believed, to a great extent imitative in origin. Their subsequent development was brought about by an unconscious process, and their diversity he accounted for as follows: "Come certamente i

popoli per la diversità dei climi, han sortito varie diverse nature onde son usciti tanti costumi; cosi dalle loro diverse nature et costumi sono nate altrettante diverse lingue; talche per la medesima diversità delle loro nature, siccome han guardato le stesse utilità o necessità delle vita umana con aspetti diversi, cosi son uscite tante lingue diverse." The same terrors which had led to the formation of the earliest religious belief caused man to give vent to his feelings by simple monosyllabic sounds. These, his first words, produced by a simple reflex action, gradually came to express all the simple feelings—grief, joy, expectation—by an unconscious process. "Spiegavano le loro passioni urlando brontolando fremendo: spinti da violentissime passione." On this basis of pure interjection was begun the building of ever-increasing verbal complexities. Proper names passed into common nouns and these into adjectives signifying abstract qualities: "Una nazione di mente cortissima non sa appellare una proprietà astratta, ossia in genere, . . . ed ove vogliano dire diverse proprietà di due corpi di specie diverse, eglino uniranno in una idea essi corpi." The onomatopoetic character of great part of early speech was recognised by Aristotle. An objection to the doctrine is raised by Max Müller and other modern philologists. Before man can form any notion of an external thing he must perceive the impression it makes upon him, and this impression it is which he seeks to express by a mere cry and not by any sort of imitative sound. But it is argued, on the other hand, that since impression must reflect some quality inherent in the object that causes it, the word expressing the impression must also, to some extent, represent the external cause. Hence Vico was not perhaps wrong in giving the importance he did to onomatopœia. Poetry and song preceded prose. "Men, at first, feel without remarking the things felt; then they remark them but in the confused manner of a wild and primitive soul; in the end, enlightened by pure reason, they begin to reflect." Poetry, the mental vehicle of feeling, is earliest everywhere. When the new languages of Europe were forming, the poets were, once more, the earliest to make use of them. The early poets were creatures of such high imagination that they believed their own fancies, "Fingunt simul creduntque." This is the reason why so much of the earliest poetry conveys a strong impression to us. These views of Vico are sufficient to show the direction which his thoughts on language took. Although, as we have pointed out, it was impossible for him to arrive at any but very rudimentary notions as to the origin of language, he succeeded, here as elsewhere, in divining many truths only recently verified. His greatest merit consists in his having seen the importance of language as the earliest available storehouse of human history and in the way in which he approached its problems.

Herodotus attributed to the Egyptians the division of universal history into three periods: "la prima degli Dei, la seconda degli Eroi, la terza degli Uomini." Vico accepted this division, and to prove that the periods were contemporaneous in all countries he constructed a very arbitrary chronological

table. The divine age, that of the primitive family, is described, as we have noticed, in the *Scienza nuova* with the assistance of the conceptions of Roman family law. The twelve tables merely registered a *de facto* despotism when they edicted: "Patrifamilias ius vitæ necisque in liberos esto." The name "family" would have been a misnomer in its origin unless we suppose it derived from *famuli* or the servants of the first *patres familias*. The transition to the second or heroic age was begun when the weak and the persecuted began to repair to the *aræ* of the strong and were taken under their protection. The virtues developed in these *famuli*—docility and submission—were just those most needed for the future state in the governed classes. In process of time these *famuli* increased in numbers and began to acquire confidence in themselves. They forgot the old dread in which their masters had been formerly held, and no longer entertained feelings of gratitude for protection from dangers which they had not personally experienced. Finally, resentment against their enslavement reached the point of revolt, and they boldly claimed recognition of their rights and guarantees of future good treatment. But resistance, again, reacting on the masters, compelled them to combine and to select a chief under whom they might successfully oppose their rebellious dependants. This is the broad outline of the earliest inception of the state. In it are no longer found only family groups but also opposing parties, class interest and, when a *modus vivendi* was established, also a rudimentary constitution whereby the striving classes secured the observance of the conditions of peace. In the forces which militated to create this new social unit, not by the action of any external agency, but, as he said, "ipsis dictantibus rebus," Vico saw the working of that Providence which is, at the same time, present in the human spirit, and, in a sense, identified with it, securing the conformity of social development to the basal laws of humanity. Its agency is manifest in what he called the "common sense of nations," the spontaneous expression of their common nature, "formed without reflection, felt by all the members of a class or of a peeple, or by all the human race." The importance of the "senso commune" appears also in the *De Uno*, where it is said to be "communem tuæ civitatis . . . prudentiam, qua id sequaris aut fugias, quod omnes tui cives . . . sentiunt sequendum vel fugiendum." The notion of a common human nature is of capital importance in the *Scienza nuova*. It was, of course, in itself by no means novel, but what had formerly been a mere expression of sentiment became imbued by Vico with a new significance when he used it to explain national growth and decay. Vico's "Völkerpsychologische Betrachtungen," says Dr. Klemm, "sind uns demnach zunächst ein eigenartiger Zug seiner Geschichtsphilosophie." It is, none the less, a fact that our author was the founder of *Völkerpsychologie* in the sense that he was the first to see the basis which it presupposes and to attempt the generalisations which it hopes to establish. Some of the *elementi* or general truth of mental history enunciated by Vico may be

mentioned incidentally as examples of his sagacity and because they pervade the *New Science* throughout:

"Men first heed what is necessary, then what is useful; they afterwards seek successively comfort, pleasure, and luxury. In the end they abuse their riches."

"The character of peoples is first cruel, then severe, and, in turn, gentle, good-natured, inquisitive, and finally dissolute."

"Governments should be suited to the nature of the governed, hence knowledge of the people is the best acquirement of princes."

"Customs are more natural and, therefore, more powerful than laws." This opinion he explains more fully in the *De Uno*, where we are told: "Both customs and laws (*leges*) are the interpretation of the law (*jus*) of nature; but customs are the more secure interpretation since they are approved by existent circumstances, and, in the course of time, they disappear therewith: laws, even when better than customs, are always less secure, since they emanate from the changeable will of a legislator."

The early state, of the formation of which we have seen Vico's account, was of an aristocratic type. The king was merely *primus inter pares*, and the supreme power was in the hands of the assembly of chiefs, who had, as it were, delegated to it their separate family authority, their rights of private vengeance, and, at the same time, recognised the sovereign prerogative of the public power to deal with and, if necessary, dispose of their family patrimonies when the interest of the state required. This view is still, in general outline, that of modern writers. The earliest state of which we have any knowledge is, according to Freeman, "that of the single king . . . ruling not by his own arbitrary will, but with the advice of a council of chiefs." The diversity of land tenure in the Middle Ages had its counterpart, according to Vico, in the commonwealth thus constituted. The lands granted by the chiefs to the revolted plebeians were held by a base or bonitary tenure similar to the *feuda rustica*; those of the chiefs themselves by quiritary or noble tenure, whilst over all lands there was the immanent right of the sovereign assembly of chiefs equivalent to that of the feudal king. The policy of the aristocracy was conservative because their interests were all opposed to change. Class privileges, religious rights, family authority, and legislation were reserved to the chiefs. Such a condition of things could not endure. The plebeian class, compelled to pay a tribute to the patricians, unable to transmit their land to their children because deprived of the *connubium* and without political power, at length once more revolted and extorted from their oppressors equality before the law. This marked the end of the heroic age. The system of law and custom which grew out of this establishment of a community of equals was better adapted to the practical needs of life, but the popular form of government inaugurated was soon transformed into monarchy, the inevitable latest type of constitution in the recurring cycle of history. It will be convenient here to mention the

celebrated theory of the "corsi e recorsi." From the nature of its subject-matter, social science must have a theory to explain a shifting series of phenomena. Modern writers usually represent the course of political change as one of progress; Vico preferred the astronomical conception of movement in an orbit. Not content to apply his theory of the three ages to the history of antiquity, and persuaded of its universal validity, he asserted that it must also apply to the course of events subsequent to the fall of the Roman Empire. The attempt to establish this thesis was unfortunate, for although he did not assert absolutely complete repetition of events to have taken place—"identita in sostanza" but "diversita nei modi lor' di spiegarsi"—yet the difficulties of the argument drove him to evident sophisms and to historically baseless assertions.

The poets of the first cycle of history were, he said, represented in the second by the chroniclers; there was among the barbarians who peopled Europe a similar growth of languages, the same system of private justice and family religion. The heroic age was repeated in the feudal organisation where the vassal held the place of the plebeian and did homage to his lord, whom he served in peace and war. When kingship had absorbed the feudal system and the Roman law of Justinian had spread through Europe, we had a second "human age," which Vico asserted to be most highly developed in the countries of his time where absolute monarchy was established. So strong was his desire to generalise this idea that he sought to apply it to countries of which he had practically no knowledge, and even asserted Japan and other Eastern countries to be in a state of development similar to that of Rome at the time of the wars against Carthage. All this may seem fanciful, but although, as we have said, the cyclical theory of history is generally abandoned, there are not wanting authors who, even at the present day, assert the existence of a law not unlike that of the *recorsi* whereby the substantial identity of certain social transformations with those of former time is inevitably determined. Gomplowicz is notably one of them. Although there are passages in the *De Uno* in which Vico appears to imply that monarchy is essentially better than other forms of government—"maxime naturæ conveniens"—it may be assumed that this was not his mature opinion. "Where," he says in the *Scienza nuova*, "there is doubt as to the character of a people they will be best governed in accordance with the nature of their surroundings (in conformità della natura dei siti) . . . in hot and stimulating climates after a manner different from that suitable to cold and slow-blooded peoples (di ottuso ingegno)." Such an opinion reminds us less of Aristotle's academic order of merit among constitutions than of the vigorous sentence of Macaulay: "A man who, upon abstract principles, pronounces a constitution to be good without an exact knowledge of the people who are to be governed by it, judges as absurdly as a tailor who should measure the Belvidere Apollo for the clothes of all his customers."

Monarchy, aristocracy, and democracy are, for Vico, all of them natural

forms of government: each belongs to one or more stages of civilisation and works better than either of the others when a nation is in need of a particular set of advantages or when its mood turns in certain directions.

The justifiableness of all governments is to be measured by the continuance of the cause to which they owe their existence. So long as the best and wisest men are secured in authority the government is legitimate and its transformation wrongful, however more symmetrical or more plausible its substitute may appear. When the patricians alone possessed knowledge, capability, and organisation, their rule was reasonable. When the lower classes had advanced in culture and their rulers no longer had any real superiority, but relied, for their political preponderance, on inherited privileges, the time had come when it was right and proper to depose them from power. Absolute monarchy is equally suitable in countries like those of the East, where a degenerate people without self-control, weakened by sloth and riches, bows the more readily before a despot because he arrogates to himself a discretion they are too dull to desire or too effete to exercise. When an energetic race has become self-conscious and developed the faculties of collective action, its need for a more popular form of constitution, in which its best elements may find room to expand, is as real as the physical requirements of the individuals who compose it. The trend of the transformation of nations is, however, in its essence decadent. The accumulation of riches, the refinement of social life, and class discord lead to the weakening of the body politic. At times the shattered machinery of state is put right by the iron hand of a Cæsar. But if the machinery is past repairing nothing can save from dissolution and anarchy but the rude repression of a foreign conqueror. The subjection of one people by another is justified and beneficial when it supplies a means for bringing back to the vanquished renewed power of political life; "he who cannot govern himself must allow himself to be governed by another, . . . the world will always be governed by those whose nature is superior."

The sound sense of these opinions is mingled with the despondent note of the "corsi e ricorsi," but, as may be seen, the idea of the recurrence of political history is not in reality essential to the spirit of the *Scienza nuova*, nor does it preclude the possibility of real and permanent progress. The strain of pessimism in the social speculations of Vico is due to a variety of causes. The degradation of the pre-historic past he had discovered, the disruption and downfall of the great institutions of Rome and of Greece which he had studied, the lawlessness of the Italy in which he lived, had all contributed to distemper his outlook on the future and to prevent him from duly appreciating the signs of serious improvement. When he expresses faith in the intentions of Providence, he does not seem to base it on the lessons his science had taught him, nor to realise that the instinctive belief in progress is, in his own phraseology, part of the *senso commune* of mankind, or, as we might put it, one of the best guarantees of its attainment.

A French critic has disparaged the political studies of Vico, as compared with those of Montesquieu, on the ground that he confined himself so exclusively to the examination of the institutions of Rome. It is true that the author of *L'Esprit des Lois* surveyed a larger field, but his attention to mediæval history is due rather to his desire to indicate the right means of reforming the absolute monarchy of France than to his having a wider grasp of his subject than Vico.

Just as, in the region of ideas, the study of politics is still influenced by the speculations of Plato, Isocrates, and Aristotle, political facts are still taken by modern authors very largely from the records of Roman history. "If we were compelled to set aside the study of Roman law, our inquiry into the origin of law and of society would," says Maine, "be at once reduced, in great part, to vague conjecture." The best proof that Vico did not commit an error in relying too much on Roman history is that he arrived at many of the best established conclusions of Montesquieu and later writers. He might, himself, have attempted to justify his method on the ground of the essential sameness of political evolution in all nations, a result of the "commune natura della nazioni." It was, of course, impossible for him to have any exact knowledge of the primitive indigenous races of Italy, deprived, as he was, of the assistance which his successors have derived from philological and archæological discoveries, but he made excellent use of the materials at his disposal. The importance of clearing up the origin and phases of the struggle between plebeians and patricians seems to have been as evident to him as to Niebuhr and Mommsen. In his account of the primitive nature of the *gentes*, in his opinion that the clients were, at first, identical with the plebeians, he is in agreement with Mommsen, although Niebuhr had differed from him. Later writers have not, it is true, agreed to the complete dismissal of the kings as pure myths. For them there is more reality in the Tarquins than in Romulus and Numa, but distinction is a characteristic of matured thought, and ought not to be expected in a pioneer.

One of the most remarkable and most successful of Vico's Roman researches was that into the origin of the "Twelve Tables." His conclusion that the statements of Livy, Pliny, and other classical writers were not to be relied upon, that the "Tables" were derived from the customary laws of the peoples of Latium and not from Greek legislators, is now generally accepted. Vico gave all the strongest reasons that have been advanced to disprove the existence of a mission to Greece. He showed the contradictions in the story and pointed out that the similarities between Attic and Roman law are traceable to general causes and are insufficient to warrant belief that the one system borrowed from the other. But these conclusions, remarkable as they may be, are less important than the opening of new fields of discussion to which the controversies which arose out of them immediately led. Throughout Italy opponents and partisans of Vico quickly began to discuss

his breach with tradition, and inquiry into early Roman law received a new impetus and began to take the direction which it has since followed. Freedom of debate was thus introduced by Vico into yet another branch of study.

In the second edition of the *Scienza nuova*, Vico devoted the third book to "the discovery of the true Homer." His inquiry into the origin of the Homeric poems has importance because he regarded it as a model of the proper treatment of early myths, and from the fact that many of his opinions are derived from the results with which it furnished him. Although so many Greek scholars readily accept Arnold's advice to the translator "not to go into the vexed question of Homer's identity," it is still a debated point whether the poems were written, or rather "edited," by a single author. For Vico, the true Homer was the Greek people itself. No one genius, but the spirit of the race groping in the secular struggle for national light and life, expressed its pains and its ideals in the *Iliad* and the *Odyssey*. The youthful exuberance of earliest Hellas appears in the *Iliad* with its Achilles, the demigod of Force and virile aggressiveness. Odysseus reveals no longer the same temper. In him is seen another order of virtues. Worldly wisdom and stratagem are more important than bodily strength, Calypso and Circe are less resistible. The second poem is unmistakably the product of a later age. Both are the work of many poets, but their fundamental difference in sentiment and style shows that the pieces united in the *Iliad* belong to a more remote age. The "true Homer" is thus the founder of Hellenic civilisation, he is its first philosopher and historian, for early history was necessarily poetical, and poetry was but an idealised history.

Friedrich August Wolf refused to acknowledge that his Homeric theory had been anticipated by Vico. "Alles hat eher das Ansehen von Visionen" was hardly a fair verdict on the third book. It is, in fact, on Vico, and not on the German critic, that we should look as the originator of the modern view of Homer and of the true method of kindred *Quellenkunde*.

The preceding sketch of the principal contents of the *Scienza nuova* may help to show that it was one of the most remarkable books of the eighteenth century. In many respects, besides the points to which we have adverted, Vico foreshadowed the methods of modern writers. He saw, for instance, that valuable assistance might be derived from biology for the purposes of social studies and illustrated some of his theories by reference to what was then known of savage races. But so much in his great work was novel, so many discoveries had to be made before his ideas could be tested and arranged, that it was impossible for him to do justice to his powers. Tradition has it that Vico sent a copy of the *Scienza nuova* to Newton. He wished, perhaps, that the author of the *Mathematical Principles* might know that, while the principle of universal gravitation had been discovered by an Englishman, an Italian had found that man in society, no less than

matter, was subject to the action of ascertainable laws. Although Newton could not admit that Vico's "laws" were clear or unexceptionable in the same sense as the uniformities of nature, he may, nevertheless, have recognised that the attempt of Vico, abortive though it might be, was worthy of high praise. The progress of all knowledge is slow, and the saying of Wilhelm von Humboldt is especially true of social science: "Between the conception and the realisation of an idea extend vast intervals of space and time."

A complete list of "Vico literature" may be seen in the *Bibliografia Vichiana*, by Signor B. Croce (Naples, 1904). The best and latest critique of Vico's ideas on social science is that of Dr. Otto Klemm in his *G. B. Vico als Geschichtsphilosoph und Völkerpsycholog* (Leipzig, 1906). An excellent general view of Vico is given by Professor Flint in the volume on Vico in Blackwood's *Philosophical Classics.*

SOME POINTS IN THE LAW OF BLOCKADE.[1]

[*Contributed by* Sir William R. Kennedy, *a Lord Justice of the Court of Appeal in England.*]

Originally, no doubt, "blockade," in military parlance, denoted an operation of a besieging force. In order to procure or to hasten the surrender of a defended place, whether maritime or inland, the assailant forbade communication between that place and the outer world, and did his best to enforce the ban by capturing and confiscating all property, neutral and enemy, contraband and not contraband, alike, found in course of transit inwards or outwards, and sometimes also by inflicting personal punishment, of which the great jurist Bynkershoek, writing in 1737, explicitly approved, upon those who tried to maintain intercourse with the beleaguered garrison. "Si quis nondum advexit, sed, dum advehere voluit, deprehendatur, sola rerum interceptarum retentione erimus contenti, idque donec caveatur, nihil tale in posterum commissum iri? Ego ea sententia non utor, *usu edoctus, ad minimum res interceptas publicari, sæpe et pœnam exigi, si non capitalem, aliam certe corporalem.*"[2] Such a blockade is, in the language of the same jurist, "jus obsidionis," and it has ever been treated as an inevitable concession to the exigency of war. "Ex ratione et gentium usu urbibus obsessis nihil quicquam licet advehere vel ex his evehere."[3]

In course of time, however, blockade has come, as a term of international law, particularly to denote a distinct operation in maritime warfare, of which the proceeding of the United Provinces in the year 1630, when they sought by a placaat, or ordinance,[4] to seal the port of Flanders, then held by Spain, has been cited as the earliest historical example. Blockade, in this modern use, does not necessarily involve, as a condition on the part of the belligerent who employs it, the siege, or investment, of any defended port or position of his enemy on the coast of sea or river which the blockade affects. On the contrary, those who write of it often qualify such a blockade by the adjective "commercial." It

[1] A paper read at the Conference of the International Law Association at Budapesth, 1908.

[2] Bynkershoek, Q.J.P., Bk. I. c. xi., commenting on Grotius, De Jure B. and P., Bk. III. c. i. (The italics are, of course, mine.)

[3] Bynkershoek, *ubi sup.* See also Vattel, Bk. III. c. vii. s. 117.

[4] Extracts from its text appear in Bynkershoek, *ubi sup.*

is a belligerent's interdict upon all intercourse or commerce by sea with a particular port or with a particular region of his enemy's coast, whether the port or the region is defended or defenceless. The blockade may be established, on his own initiative, by the commander who has been entrusted by the belligerent Government with the direction of naval warfare in that part of the world. Such a blockade is distinguished by publicists as a *de facto* blockade. More frequently, however, the blockade is established by the commander on the instructions of his Government, which publishes at home, and formally notifies to neutral States, the blockade which it directs, as, for instance, President Lincoln did when it was determined by the Government of the United States in 1861 to blockade the Atlantic sea-board of the Southern Confederacy. When this happens, or when the belligerent Government publishes at home and notifies to neutral States its adoption of the act of its authorised commander, a "public" or "governmental" blockade, as distinguished from a *de facto* blockade, is established, and is binding upon neutral Powers, provided always that the belligerent is able to prove the reality in fact of the blockade which he has thus proclaimed.[1] So long as the blockade, however established, continues, the blockading belligerent, in regard to any vessel which, without his special licence or the excuse of some unforeseen and overwhelming necessity (and, in regard to neutral vessels which were in some port of the blockaded region at the time of the commencement of the blockade, after the expiration of a discretionary term of grace), attempts to pass into or out of the blockaded region, is entitled by international law to capture and confiscate such vessel and her cargo, provided that three conditions are fulfilled. These conditions are, of course, well known to students of international law, but I think that I ought not to pass over them. For whilst it is no part of the scheme of this paper to present to the Conference a summary of the whole Law of Blockade, there may be here those to whom the subject is not familiar, and as to the correct method of the fulfilment of these conditions statesmen and jurists have still left open to controversy some noteworthy points of principle and detail. Further, by this addition to the brief preliminary statement I have given as to the meaning of maritime blockade and the process of its establishment, my hearers, whether experts in international law or laymen, will be enabled, I hope, to appreciate with more ease and interest the later observations which I shall submit for their consideration.

The three conditions which I have mentioned are these:

(i) In the first place, the blockade must be real, or, as it is described in the text of the Declaration of Paris, 1856, "effectif," *i.e.* the access from the sea to the maritime region to which the belligerent applies the hostile blockade must, with an allowance, at the most, of a temporary

[1] Westlake, *International Law*, Pt. II. p. 232; and cf. Phillimore, *International Law*, iii. 476.

and involuntary dislocation of the force through stress of weather,[1] so far remain throughout under the actual domination of his warships stationed or cruising in the vicinity (with or without the aid of shore batteries) for this special purpose, that traffic by sea to or from that region without his leave is not practically possible, and any vessel attempting to "run the blockade" must, in all probability, be captured by the blockading squadron.

In a reported English case in our Court of Queen's Bench,[2] Chief Justice Cockburn neatly expressed the condition in these words: "In the eye of the law blockade is effective if the enemy's ships are in such numbers and position as to make the running of the blockade a matter of danger, although some vessels may succeed in getting through." The language of the Declaration of Paris, in regard to blockades binding upon neutrals, that they must be "maintenus par une force suffisante pour interdire réellement l'accès du territoire ennemi," cannot reasonably be interpreted in any stricter sense. Otherwise we should be forced to the absurd conclusion that a single success in blockade-running will suffice to destroy the validity of a blockade. Not, perhaps, absurd, but still, I submit, most unreasonable at the present time would be the contention which has been put forward, and then with some show of reason, by writers in the past,[3] that, in order that the blockade should be binding upon neutrals, it must be maintained by a squadron which is stationary. Obviously, in these days of swift cruisers and wireless telegraphy, the reality and effectiveness of a blockade (and this the essential matter) could be at least as well maintained by a smaller force of the latter class; and, as has been pointed out,[4] the danger to a stationary squadron from torpedoes and submarine boats might be so great at night that such a squadron could not keep its station except by day. "Il faut bien se garder d'édicter des règles dont la stricte observation pourrait être rendue impossible par la force des choses."[5]

One further remark only on this part of my subject. I have used the expression "warships stationed or cruising *in the vicinity* for this special purpose." The proximity of the blockading squadron to the port or region blockaded is not determined by any rule or usage, but necessarily depends upon circumstances, of which the nature and number of the squadron and

[1] This is not universally admitted, but has a great preponderance of authority; see Westlake, p. 236, and Phillimore, vol. iii. 484.

[2] *Geipel* v. *Smith*, L. R. 7 Q.B. 404, at p. 410; cf. also the judgment of Sir Wm. Grant, *The Nancy*, 1 Acton's Rep. Dr. 7, at p. 58, and of Dr. Lushington in *The Franciska*, Spinks 287.

[3] Referred to by Dr. Oppenheim, *International Law*, vol. ii. p. 407.

[4] Westlake, *International Law* (1907), Pt. II. p. 231. Pillet, *Les lois actuelles de la guerre*, 1893, pp. 135, 136, also gives authority to the view stated in the text, and Dr. Oppenheim, *ubi sup.*, vol. ii. 408, adds that of Perels and Bluntschli.

[5] His Excellency Baron Marschall de Bieberstein, at the recent Hague Conference, October 9, 1907.

the nature of the locality are the most decisive. During the Crimean War the port of Riga was blockaded by a single warship, stationed at a distance of 120 miles from the town of Riga, in the Lyser Ort, a channel three miles wide, which formed the only approach to the gulf. During the American Civil War four hundred Federal cruisers sufficed to blockade the coast of the Confederate States, extending some 2,500 miles.[1]

(ii) In the second place, the legality of the condemnation of a vessel for running, or attempting to run, the blockade depends upon the fact that those who are responsible for the direction of her course have had, before her capture, notice of the existence of the blockade. Notice to the master of the vessel binds the owner of the vessel, and if he is also the owner of the cargo on board, the cargo as well as the vessel is liable to confiscation; but, in general, as Lord Stowell stated in the case of *The Mercurius* (1 C. Rob. 80), he is not the agent of the owners of cargo unless expressly so constituted by them; and, therefore, notice to the master of the vessel cannot rightly be held *per se* necessarily or presumptively to constitute notice to the owner of the vessel's cargo, if he be distinct from the owner of the ship, so as to justify the captors in confiscating the cargo.

Thus far, I think, all nations are in practical agreement. But in applying the term "notice" there is a considerable divergence both in theory and in practice. According to the prevalent continental view, whilst, so far as regards egress from the blockaded port, Phillimore's statement that "after the blockade has existed for any length of time it is impossible for those within to be ignorant of the forcible suspension of their commerce, and the notoriety of thing supersedes the necessity of particular notice to each ship"[2] would not, I think, be controverted, an actual notice given to each incoming ship is held to be essential to the validity of the seizure and confiscation of that ship for breach of blockade. "La pratique maritime commune exige, pour la validité de la saisie, qu'elle ait été précédée d'une notification spéciale au navire qui en est l'objet."[3] The practice of France and of Italy has been in conformity with this rule. The British view is different in the case of a blockade which is not merely a *de facto* blockade—of that vessels going in are generally entitled to actual notice before they can justly be liable to the consequences of breaking a blockade—but which has been proclaimed and notified to neutral Governments so long that it may fairly be deemed to have become a matter of notoriety at the time of the sailing of the vessel which is seized by the belligerent as a blockade-runner. In the case of a vessel so sailing, notice of the blockade is inferred from the fact of its general notoriety as against both the owner of the ship and against the owners of her cargo. In regard to the ship, I may quote a passage from one of the

[1] Dr. Oppenheim, *International Law*, vol. ii. p. 408.

[2] *International Law*, Bk. III. p. 494. [3] Pillet, *ubi sup.* p. 138.

"masterly judgments," as Wheaton has justly styled them,[1] of Lord Stowell in the High Court of Admiralty—the often-cited judgment in *The Neptunus*:[2]

"The effect of a notification to any foreign Government would clearly be to include all the individuals of the nation; it would be nugatory if individuals were allowed to plead their ignorance of it; it is the duty of foreign Governments to communicate the information to their subjects, whose interests they are bound to protect. I shall hold, therefore, that a neutral master can never be heard to aver against a notification of blockade that he is ignorant of it. If he is really ignorant of it, it may be subject of representation to his own Government and may raise a claim of compensation from them, but it can be no plea in the Court of a belligerent. In the case of a blockade *de facto* only, it may be otherwise; but this is a case of a blockade by notification." The same principle has been applied by our Prize Courts in dealing with the liability of the owners of cargo. "It is established that when the blockade was known, or might have been known, to the owners of the cargo at the time when the shipment was made, and they might, therefore, by possibility be privy to an intention of violating the blockade, such privity shall be assumed as an irresistible inference of law, and it shall not be competent to them to rebut it by evidence. . . . The necessity of acting upon these rules is rested by Lord Stowell on the notoriety of the fact that in almost all cases of breach of blockade the attempt is made for the benefit and with the privity of the owners of the cargo; but, if they were at liberty to allege their innocence of the act of the master, it would always be easy to manufacture evidence for the purpose, which the captors would have no means of disproving."[3]

This doctrine of "constructive notice" in the case of a notified and notorious blockade has been consistently maintained by my country. But, with sincere respect to that learned author, I must say that I was surprised to read the statement in Pillet's valuable text work, *Les lois actuelles de la guerre*, that this principle has been accepted by England alone.[4] It is recognised, I believe, by at least two great maritime Powers, America and Japan. In a note on p. 139, Pillet refers to the declaration by President McKinley of the blockade of Cuba in April, 1898, as admitting the necessity of the "notification spéciale." A reference to the text of that document, which was published in *The Times* of April 23, 1898, shows that Pillet's inference is mistaken. The words of the document were: "Any neutral vessel approaching any of the said ports, or attempting to leave the same without notice or knowledge of the establishment of

[1] *Elements of International Law*, 4th English edition, p. 684.

[2] 2 C. Rob. 112.

[3] Lord Kingsdown, delivering the judgment of the Privy Council in *The Panaghia Rhomba*, 12 Moore P.C. 168.

[4] P. 138.

such blockade, will be duly warned by the commander of the blockading forces, who will endorse on her register the fact and the date of such warning." It is quite plain that the President's proclamation limited the right to a "special notification" to the case of a vessel which is navigating *without notice or knowledge* of the blockade. Its language does not suggest that notice or knowledge would not be inferred by an American Prize Court if a vessel was found approaching or hovering in the neighbourhood of a blockaded Cuban port after the Governmental publication of the blockade had become notorious. On the contrary, so far as regards America, the text of the document which I have quoted goes to disprove the contention of the learned jurist, that it is Great Britain alone which does not accept what he calls "la pratique maritime commune" of the necessity of a special notification in every case and in all circumstances.

The difference in national practice and juristic opinion upon which I have just touched is eminently one for settlement by international conference. I content myself with saying that, in my humble judgment, the view which I may describe as the Anglo-American view appears to be both consistent with equity, and (so far as one who is not a naval expert can judge) sanctions a practice which is necessary for the effective use by a maritime belligerent of the undoubted right of blockade. If the vessel sailing for a blockaded port, after the belligerent's published notification to the Government under whose flag she sails, is to be treated as immune until she has been particularly warned by a "special notification," the intending blockade-runner may safely approach the blockaded port or hover in its vicinity in the hope of choosing her opportunity and slipping in without obstruction; for if, contrary to her hope, she is stopped and visited by a warship of the blockading squadron, she will be able successfully to plead the absence of special notification and go scot-free; only to try, in all probability, a second venture. It appears to me that the reasoning, upon the practical aspect in such matters, of the American Courts in *The Admiral*, *The Cornelius*, and *The Cheshire* (reported in the third volume of Wallace's (American) Reports), approving the judgments of Lord Stowell in *The Charlotte Christine* and *The Neutralitet* (reported in the sixth volume of Robinson's (English) Reports) is sound. In the course of his judgment in *The Cheshire* (p. 235), Field J. observed: "If approach for inquiry were permissible, it will be readily seen that the greatest facilities would be afforded to elude the blockade." I will only add that, if a "special notification" is to be an indispensable condition precedent to a right of capture for blockade-running, it is difficult to assign much practical value to the belligerent's Governmental notification of the blockade to other Powers; and there appears to me to be good sense in the language of Lord Stowell in his judgment in *The Columbia* (1 C. Rob. at p. 156), in reference to the effect of a treaty with America, which provided that "there must be a previous warning" before capture. "Certainly," said Lord Stowell, "where vessels sail without a

knowledge of the blockade, a notice is necessary; but if you can affect them with knowledge of the fact, a warning then becomes an idle ceremony, of no use, and therefore not to be required."

(iii) I now come to a third condition of a valid and binding blockade. It needs only two or three sentences, because, happily it is a matter as to which no difference of opinion or of usage exists. The blockade must be impartially exercised. The interdict of commerce with the blockaded port must be enforced with equal rigidity both as between the subjects of the belligerent state and neutrals, and between one neutral and another. The belligerent is not debarred by this condition from granting special licences of ingress or egress to individuals; what he must not do is to differentiate between one nationality and another.

I now approach the two questions connected with the law of blockade to which, on account of their importance, I particularly wish to invite the attention of this Conference.

The first of these questions is as to the alleged applicability to blockade of the so-called principle or doctrine of "continuous voyage"; the second is as to the possibility of international agreement as to when the "attempt" to run the blockade should be treated as beginning, so far as it affects the liability to capture.

(*a*) "*The Continuous Voyage.*"—The origin of the phrase itself is interesting and rather curious. The history is fully set forth by Westlake in his standard work on International Law, and by other writers on that subject. For my purpose to-day a short statement will, I hope, suffice.

In the war between France and Great Britain in 1756, the French found that their colonial trade was crippled by the superiority of their enemy at sea. So, for a time, they ceased to insist upon their monopoly of that trade and opened it to the Dutch, granting licences to Dutch vessels to carry goods between the colonies and the mother country. Thereupon, Great Britain treated Dutch ships using these licences as identified with the enemy, and, when captured, they were condemned by the Prize Court as lawful prize.

In 1793 France opened her coasting and colonial trade to all neutrals, and Great Britain, with whom she was at war, thereupon extended the practice of 1756 and penalised neutral vessels not only when carrying cargoes between France and her colonies, but also when trafficking between their own ports and a belligerent colony, or between any ports belonging to the belligerent country. The Declaration of Paris of 1856 prevents any future application of this extension of the practice of 1756, which has been condemned generally abroad, and both Westlake and Hall endorse that condemnation. Neutrals, so assailed, naturally sought to evade liability, and, to borrow Westlake's description, they did so in the following manner "Neutrals carrying on the trade between an enemy colony and its mother-

country would unship the cargo at a neutral port, reload it—perhaps with some addition, or after payment of the Customs duties, in order to give further colour to the pretence of importation there—and then complete its transport to the enemy mother country on the same or another ship." [1]

The question thereupon arose, when the vessel on which the goods were carried from the intermediate port to the enemy port happened to be captured by the British on the voyage to that enemy port, whether it was lawful prize or not. In more than one case the English tribunals of Prize adjudged that it was, holding that the latter part of the voyage was a continuation of the former part, so as, in Westlake's words, "to constitute one transport between the places between which the trade was prohibited to neutrals by Great Britain." In *The Maria*,[2] Lord Stowell thus stated the law:

"It is an inherent and settled principle, in all cases in which the same question can have come under discussion, that the mere touching at any port, without importing the cargo into the common stock of the country, will not alter the nature of the voyage, which continues the same in all respects, and must be considered as a voyage to the country to which the vessel is actually going for the purpose of delivering her cargo at the ultimate port."

And, three years later, in his judgment in *The Thomyris*,[3] the same great authority affirmed that it was a clear and settled principle that the mere transhipment of a cargo at an intermediate port will not break the continuity of the voyage, which can only be effected by a previous actual importation into the common stock of the country [4] where the transhipment takes place.

To designate the doctrine asserted in these decisions as the doctrine of the continuous voyage is intelligible enough. Goods are being carried by sea on a prohibited adventure from A to B, the latter being a hostile port. In the one case—the case of *The Maria*—the vessel which has sailed with the goods on board is captured by the belligerent on her way to B. Plea, for ship and goods, that the voyage from A to B had been previously to the capture interrupted at C, an intermediate port, at which the goods were unloaded and reloaded, and where, it is contended for the ship, a new voyage began. Answer of the captor, that the voyage was none the less, on account of the temporary stoppage, one prohibited voyage, it being clear that the voyage of the ship and the carriage of the goods were from the first intended to be from A to B and that the stoppage was merely to give a colour of innocence to the prohibited transaction. Or take the case of the *Thomyris*, where the goods were captured in course of transit from A to B on board a ship into which they had been transhipped for that hostile port for the purpose only of appearances, there never, in

[1] Westlake, *ubi sup.* p. 255. [2] 5 C. Rob. at p. 368. [3] Edwards, Adm. Rep. 17.

[4] This language was adopted by the Supreme Court of the United States in the judgment in *The Bermuda*, 3 Wall. 551.

fact, having been any intention in regard to their destination, except that they should be carried by sea from A to B.

It seems to me that to hold, as it was held, that at the time of the capture the carriage of the goods by sea was a continuation of the prohibited voyage, begun at the original port of sailing in regard to both ship and goods in the first case, and as regards the goods in the second case, was reasonable and just.

Now, this doctrine so stated and so applied by the English Prize Courts has in the course of the last sixty years been invoked by eminent authorities to justify by analogy the conduct of a belligerent towards a neutral in two kinds of case, which appear to me to differ in material circumstances, both from the cases which I have just referred to, and from each other. The first kind of case is that in which a belligerent captures on the high seas a neutral vessel, proceeding to a neutral port as her one and final destination, but carrying a cargo which consists wholly or in part of contraband of war, destined by the shipper for the use of the belligerent's enemy, and intended to be forwarded to that enemy from the port of the vessel's discharge, either by sea or land or by inland water transit. The second kind of case is that in which a belligerent captures on the high seas a neutral vessel, carrying to a neutral port, as her one and final destination, a cargo not of a contraband nature, but consigned by its shipper to agents at the vessel's port of destination, who, as the shipper intends and has arranged, shall, at the port of the vessel's discharge, load the goods on board another vessel, which will then attempt to effect their carriage into a port which is blockaded at the time by the belligerent.

Now, in regard to each of these two cases, I feel very great difficulty in tracing such an analogy of material circumstances as would justify the belligerent captor in basing a claim to confiscate the neutral property upon the authority of the doctrine of "continuous voyage," as enunciated and applied by the British Prize Court. It seems to me that an essential distinction lies in the fact that the capture in each of these cases is of neutral property in transit by sea, not to a hostile but to a neutral port, which, so far as the carrying ship is concerned, is at the time both the immediate and the final destination of the voyage. But whilst, in my humble judgment, the reasoning, and the practice based upon that reasoning, in the English decisions from which the phrase "continuous voyage" draws its origin, cannot properly be treated as warranting a decision in favour of the belligerent in either of the two sets of circumstances which we are considering, it does not, of course, follow that in the one case or in the other the question of the legality of the belligerent's claim to capture and to confiscate is therefore necessarily concluded against him.

On the contrary, so far as concerns the carriage of contraband which is on board a vessel bound to a neutral port as her port of discharge, but as to which it can be proved by the belligerent who seizes it on the high

seas that the goods are being carried on board that vessel not for the purpose of importation into the common stock of the country where they will be unloaded, but for the purpose of their being forwarded from the port of discharge by land or water, it matters not which, to the enemy or for the enemy's use, and under arrangements for effectuating that purpose, I prefer the view that the international law ought to look beyond the destination of the vessel to the destination of the goods, and to sanction the belligerent's interference with the adventure by the detention of the carrying vessel and the confiscation, through the Prize Court, of the contraband goods. It appears to me that there is great force in the observation of Sir Godfrey Lushington, that, if the contrary view were established, then, under certain circumstances, a belligerent might as well give up all attempt to stop contraband.[1]

Certainly the belligerent's claim, in this case of contraband, has in its favour a great body both of expert opinion and of national practice, during the last half-century. The judgments of the French Prize Court in the case of *The Frau Howina*, a Hanoverian ship captured in the course of the Crimean War; of the Supreme Court of the United States in several cases during the American Civil War; of the Italian Prize Court in the case of the *Doelwijk*, a Dutch vessel, captured in the course of the war between Italy and Abyssinia in 1896; the Prussian Regulations of 1864 regarding Naval Prize; and, last in date, the action of the British Government during the late Boer war in regard to *The Bundesrath*, *The Herzog*, and *The General*—all these are in accord with the weighty opinions[2] of Bluntschli, Calvo, Gressner, Perels, Westlake, and Holland, and with the rule adopted by the Institute of International Law at its Venice Meeting in 1896: "La destination pour l'ennemi est présumée lorsque le transport va à l'un de ses ports ou bien à un port neutre qui, d'après des preuves évidentes et de fait incontestables, n'est qu'une étape pour l'ennemi comme but final de la même opération commerciale."[3]

But the conclusion, I submit, ought to be different when we come to consider the second of the two cases which I have put, and with which this paper is specially concerned, because it is the case of a seizure of a neutral vessel bound to a neutral port, which the belligerent who seizes her seeks to justify not on the ground of the cargo being contraband, but on the ground that the cargo on board has been shipped, and is being carried to the neutral port, with the purpose, for the execution of which the shipper or his agents have made or will make arrangements, of those goods being carried in some other vessel to a port which the belligerent

[1] Cited in an article contributed by Mr. Dundas White to the *Law Quarterly Review* for January, 1901 (vol. xvii. p. 22).

[2] Quotations from the works of the continental jurists are collected by Mr. de Hart in his article in the *Law Quarterly Review*, vol. xvii. pp. 198, 199.

[3] *Annuaire de l'Institut de Droit International*, vol. xv. p. 231.

is blockading. The theory of such a justification has been maintained, so far as I know, only in the Courts of the United States during the Civil War of 1861. It appears in the judgments of the Supreme Court in *The Bermuda*[1] and elsewhere; but I shall limit myself to quoting, as it is there stated within the compass of a single sentence, from the judgment of Chief Justice Chase in *The Springbok*[2]:

"But we do not now refer to the character of the cargo for the purpose of determining whether it was liable to condemnation as contraband, but for the purpose of ascertaining its real destination; for, we repeat, contraband or not, it could not be condemned if really destined for Nassau[3] and not beyond, and, *contraband or not, it must be condemned if destined for any rebel port, for all rebel ports were under blockade.*"[4]

The theory thus judicially asserted has, I believe, been universally, or almost universally, disapproved both in Great Britain and on the Continent; and, with most sincere deference to the great tribunal and to the very learned Chief Justice who delivered its judgment in this and in other prize cases of that period, I must say that I cannot see how the action of the captor in such a case can be justified by an application to blockade of the doctrine of "continuous voyage," or of any logical extension of that doctrine.

It would, I think, be almost presumptuous on my part if I thought I could better, by language of my own, the clear and concise comment contained in the following passage:

"In the United States, during the Civil War, the carriage of contraband was generally presented to the Courts in connection with blockade-running, to which the doctrine of continuous voyage does not apply. The offence of blockade-running, consisting in the attempt to communicate with a prohibited port, and not in the introduction of a prohibited class of goods, is essentially one of the ship, and not an offence of the goods, except as derived from that of the ship. If a ship is bound for a neutral port, not as a port of call, no blockade-running has been attempted by her, and her cargo, still innocent, cannot connect her with any such attempt which the ship into which it may be removed may afterwards commit."[5]

(*b*) *The time at which the "attempt" to run the blockade ought to be held to begin, so far as it affects the liability to capture.*—There is no doubt that, according to both the British and American view of international law in relation to maritime warfare, a ship "attempts" to run the blockade, and is, therefore, liable to capture from the moment of her sailing, if those

[1] Wallace (Amer.), 514.

[2] *Ibid.* 1, at p. 23.

[3] The neutral port, for which the vessel was bound, as her port of discharge, at the time of her capture.

[4] The italics are my own.

[5] Westlake, *International Law*, Pt. II. pp. 256, 257. That very learned jurist has more fully stated his argument in an article in the *Law Quarterly Review* (1899), vol. xv. p. 26.

who are responsible for her direction had at the time, or must be presumed to have had, knowledge of the blockade, and intended, nevertheless, that she should prosecute a voyage to the blockaded port. The law was so laid down by Lord Stowell,[1] and in the American decisions, in cases arising out of the blockade of the Confederate seaboard by the United States, "they enforced in all its strictness the rule that the act of sailing from a neutral to a blockaded port with intent to enter and with knowledge of the blockade subjects both ship and cargo to condemnation." According to French practice, which, I believe, the prevalent view of continental jurists approves, the liability to capture is first created only by the attempt to cross the very line of blockade or by proceeding, in order to do so, after receiving a notification from a belligerent warship. Without admitting the justice of Pillet's condemnation of the Anglo-American rule—which he denounces as resulting in "une extension démesurée donnée à la notion de violation du blocus et pour les neutres, une insécurité générale"—I should venture to suggest that those who may have, and, as we may hope, at no distant date, to consider whether an international agreement as to the rules of blockade cannot be concluded, might well consider whether the conditions of modern commerce and intercourse by sea, and the interests of civilisation which are increasingly dependent upon their security, do not justify some limitation of the right of capture to a narrower area than the rule allows. "It may further be observed," says Mountague Bernard, "that any extension of the belligerent's power to capture on the high seas has a tendency to diminish more or less the necessity of keeping an adequate force at the place or places blockaded, and thus to open the door to paper blockades."[2]

It appears to me that in this matter it is not a question of choice between the very wide Anglo-American area of capture and the very narrow area given by the French view of international rights, which, for reasons which I have already had occasion to indicate in dealing with the requirement of a special notification, may reasonably be objected to, from the belligerent's standpoint, as offering too great an opportunity to the blockade-runner. Mine is merely a tentative suggestion, but it occurs to me that a solution of the difficulty of agreement between the advocates of the two systems might be found in the compromise which would result from the adoption by international compact of a rule which should require that the belligerent's notification of blockade should specify, by latitude and longitude, or in some other way, a zone (not necessarily a narrow zone) within which the blockading force would operate in its maintenance of the blockade, and entry into which would subject all vessels to capture and condemnation unless it could be clearly proved that they were not attempting to enter the blockading port. The "attempt" would, under such an arrangement, not be treated

[1] See his judgment in *The Columbia*, 1 C. Rob. 154.

[2] *The Neutrality of Great Britain during the Civil War* (1870), p. 308.

as commencing, so far as to fix a liability upon the ship, until she entered or was trying to enter the notified zone. It is, of course, possible that my want of acquaintance with naval matters has prevented me from foreseeing some reasonable objection on the part of belligerents to the acceptance of such a compromise as I have ventured to indicate. It is, however, I think, not undeserving of mention that, if my memory of the reported cases serves me aright, in every instance of condemnation in the English Prize Courts, from the commencement of Lord Stowell's time, for blockade-running, the vessel was captured when actually approaching or when hovering about the neighbourhood of the blockaded locality.

THE PAPACY AND INTERNATIONAL LAW.

[*Contributed by* A. Pearce Higgins, Esq., LL.D., *lately Deputy Whewell Professor of International Law in the University of Cambridge.*]

It is an invariable rule that where a State accredits a representative to a foreign Court it must receive one from it, if the latter desires to send a minister. This rule does not apply in the case of representatives of the Pope. Great Britain since the Reformation has refused to enter into relations with the Roman Curia, and as a rule Protestant States refuse to receive Papal envoys; Russia and Germany, although they refuse to receive them, are both represented at the Vatican. The grounds of such refusal, broadly speaking, are that the reception of a Papal legate would be a recognition of the Papal claims, and also that legates and nuncios in the exercise of their functions tend to stir up opposition to the territorial law, and so to create an *imperium in imperio*. The question whether the Pope has a right of legation strictly so-called involves the wider one of his international position and his possession of international personality. The Montagnini incident of December 1906 showed that this is a question of practical importance; it also brought into prominence the divergent views of publicists on this matter.

English and American writers on international law do not as a rule deal with this question at any length; in fact, by some it is practically ignored. Continental publicists give it greater prominence, and the majority of these writers deny that the Pope is an international person in the sense in which that term is used in international law.

The position of the Papacy is exceptional; there is no institution in the history of humanity with which it can be compared. The fact that the Pope was for centuries both a temporal sovereign and the chief ecclesiastical dignitary in Western Christendom naturally raised doubts as to the capacity in which he was acting on a given occasion. When he ceased to be a temporal sovereign, the tradition which had so long attached to his dual position was not easily disregarded, and it is the continuance of this tradition which a distinguished French publicist asserts to be responsible for the anomalous position which, from the standpoint of international law, is now occupied by the head of the Roman Church.[1]

[1] The authorities dealing with this question are given in a note in the late Prof. F. Despagnet's *Cours de Droit international public*, §147, to which must be added the ninth

Down to the year 1870 the Pope was both the earthly head of the Roman Catholic Church and a sovereign monarch of one of the States of Europe, the Papal State. For a few years, at the end of the eighteenth and beginning of the nineteenth century, he was without territory—a dethroned temporal monarch; but on the fall of the Napoleonic Empire in 1814 he was restored to his temporal dominions, and remained in possession of a diminished kingdom (for a large part of the Papal States demanded and obtained union with the Kingdom of Italy in 1860) until, on September 20, 1870, the Italian troops entered Rome. This action of King Victor Emmanuel was endorsed after a plébiscite by an overwhelming number of the inhabitants of the Papal States on October 2, 1870. By a Royal Decree of October 9 in the same year it was declared that "Rome and the Roman provinces form an integral part of the Kingdom of Italy." This Declaration appears to undermine the position adopted by one writer, that as the Italian troops did not actually enter the Vatican, the Pope remained in undisturbed possession of a territory which, though minute in area, still sufficed to entitle him to rank as a territorial sovereign.[1] From the standpoint of the Italian Government, their possession of Rome was complete, and though the venerable Pontiff was undisturbed, the occupation of the Papal States was effective, and the Pope ceased to exist as a territorial sovereign. But though his territorial sovereignty was at an end, no change was or could be effected by the Italian Government in his ecclesiastical position. For a large part of Christendom he still personifies the greatest moral force in the world, and from his exalted position it follows that his spiritual subjects of every nation wish to continue to have access to him, and freely to receive his agents as in the past. Roman Catholic States therefore recognise that the Pope still occupies a special legal position, and his legates and nuncios are ranked with, and sometimes take precedence of, ambassadors in these States, a precedence which even before the loss of temporal power was accorded to the Papal representative as the ambassador of the highest dignitary in the Catholic Church, and not as a temporal sovereign.[2]

It is unnecessary for our purpose to trace even in outline the history of the struggles between the Papacy and the Empire, or the fight for

section of Prof. E. Nys' *Droit international*, vol. ii. pp. 297–323. See also G. Flaischlen, "La Situation juridique du Pape," *Revue de Droit inter.* vol. vi. (2nd series), p. 85; J. Westlake, *Peace*, pp. 37–9; L. Oppenheim, *International Law*, pp. 149–54. Sir R. Phillimore's *International Law*, vol. ii. pp. 343–531, affords the fullest treatment of the Papacy and its relation to the various European States.

[1] G. Flaischlen, *R.D.I.* vol. vi. (2nd series), p. 85.

[2] Pradier-Fodère, *Cours de Droit diplomatique*, vol. i. p. 120. Fénelon declared that the Papal nuncio was regarded simply as the ambassador of a foreign prince, and in 1788 a distinguished lawyer, Christian Henri de Römer, maintained that the right of legation belonged to the Pope as a temporal sovereign only (E. Nys, *Droit inter.* vol. ii. p. 310). The majority of modern writers hold that the Papal envoys represent the Pope in his ecclesiastical capacity (E. Lémonon, "Les Rapports de la France et du Saint-Siège," *R.D.I.* (2nd series), vol. ix. p. 415; W. E. Hall, *Inter. Law* (5th ed.), p. 314).

supremacy between the Conciliar party and the Pope, though it must be remembered that in the fifteenth century Œcumenical Councils received ambassadors from the Empire and kings, and these ambassadors took precedence of those of the Pope.[1] The Papalist cause was for the time being triumphant at the Council of Basle.

Out of these struggles there emerged the anti-Papal doctrine of the Divine right of secular governments to be free from Papal control, a doctrine which contributed in no small degree to the formation of the modern doctrines of sovereignty,[2] a doctrine which is still working in the anti-clerical movements of modern times.

The position of the Papacy down to the eve of the Reformation was a striking one. The Pope claimed, and not infrequently exercised, the position of arbitrator in international disputes. The good faith on which treaties were made brought international contracts within the sphere of the Canon Law. The Pope was an "independent international magistrate, head of the supreme tribunal for the settlement of international disputes, and the supervisor of engagements. With this object he used all the powerful moral forces at his command—admonition, censure, excommunication."[3]

The struggles in England between Anselm and Henry I. and Becket and Henry II. were typical of the constantly recurring struggles between the religious and civil forces in the States of Europe. Acting under Papal instructions, the clergy everywhere sought for, and in some cases obtained, exceptional positions and immunities from the civil laws. Popes issued bulls deposing and setting up kings, allotting kingdoms and dividing newly discovered lands. With the Reformation a great change took place. The Treaty of Westphalia of 1648 affords striking evidence of the existence of a new order of things. The legal equality of Protestant and Catholic States was acknowledged, the absence of the recognition of a common religious bond which had hitherto been a bar to equality of intercourse was thus removed, States met as secular institutions free from religious trammels, and the way was prepared for the ultimate admission of all civilised States, irrespective of creed, into the family of nations. The treaty, furthermore, abolished a crowd of petty ecclesiastical States in Germany, dependent in no small measure on the Pope. It was in vain that Innocent X. issued the Bull *Zelo domus Dei*, condemning and utterly annulling the Treaties of Münster and Osnabrück.[4] Papal protests against treaties cease henceforth to be effective, and the protest of Pius IX. against the Italian occupation of Rome in 1870 met with no response from the Powers of Europe.

This protest leads to a consideration of the theory of the Church as

[1] Nys, *op. cit.* vol. ii. p. 288.

[2] J. N. Figgis, *The Divine Right of Kings*, p. 44.

[3] R. de Maulde-la-Clavière, *La Diplomatie au Temps de Machiavel*, vol. i. p. 23, cited by E. Nys, *op. cit.* p. 300.

[4] Phillimore, *International Law*, vol. i. p. 395.

regards its temporal power. It is important to understand why the Pope attaches so much importance to the possession of temporal sovereignty when he claims a spiritual world-empire. The Holy See has always considered that the States of the Church were a domain with which the Pope had been endowed for the purpose of assuring his independence in the exercise of his spiritual functions. The keeper of the oracles of God, the standing witness for truth and righteousness in the world, should, it was argued, be free from all physical compulsion, and this absolute freedom could only be maintained by the possession of a definite territory uncontrolled by any temporal power. The area of the temporal dominions of the Pope was never very large, but popes and cardinals on admission to office swore to preserve the domains intact, and sought by means of physical force and spiritual weapons to ward off all encroachments.

One important result of the view taken by the Papacy of the character of the domains of the Church and the necessity for the preservation of the temporal power is clearly dealt with by Despagnet.[1] The Church contended that it was the duty of all Catholic States to protect the Pope against any change, external or internal, which might compromise his temporal sovereignty, and thus militate against the free exercise of his spiritual functions. Interventions in the Papal States were the result of this teaching. Napoleon Bonaparte, on the plea of better affording protection, took the extreme step of making Pius VII. prisoner and removing him to France. France, Austria, and Spain at different times during the nineteenth century intervened in the Papal States, and the movements in favour of popular government in these States were suppressed. From 1849 until the outbreak of the Franco-Prussian War in 1870, French troops guarded the Pope. Their withdrawal led to the entry of the Italian troops and the fall of the temporal power.

The allegiance of Western Christendom to the Pope had in early times led to the growth of a regular service of Papal agents.

The earliest representatives sent by the Pope were the *Apocrisarii* or *Responsales*, who were sent first by the Bishop of Rome in the time of Constantine to reside at Constantinople; subsequently they resided at the Courts of the Frankish kings. They were sent as spiritual agents, and it is not improbable that at first their presence was required by the emperors, who to some extent were enabled to supervise the doings of the Pope. But the decay of the Roman Empire synchronised with the increasing power of the Bishops of Rome and their growing claims to the obedience of Christendom. It was not, however, until the eleventh century that the institution of legates appears.[2] The Papal envoys were sent for various purposes, of which English history affords ample illustration. Gradually they became differentiated in rank according to their missions.[3] *Ablegati* were those who had no political mission, but were sent for such purposes as

[1] *Droit international*, §150; see also Phillimore, *International Law*, vol. i. p. 635.

[2] Nys, *op. cit.* vol. ii. p. 303.

[3] Phillimore, vol ii. p. 525.

bearing the cardinal's hat to a newly elected member of the Sacred College; *legati* with a political mission were either *legati a latere*, who were always cardinals and occupied the highest rank, or *legati missi*, who were never cardinals but were invested with similar powers to the former; when sent as permanent residents, they were known as *Nuntii*. These agents of the Pope were ranked with ambassadors in the first class in the Regulations adopted by the Congresses of Vienna and Aix-la-Chapelle for settling the precedence of diplomatic agents.

The chief reason for the institution of resident agents from the Papal Court was the negotiation and execution of concordats. Concordats have been described as agreements between the Holy See and the governments of States the inhabitants of which are either wholly or in part Catholic, not on questions of faith or dogma, but on matters of ecclesiastical discipline, such as the organisation of the clergy, the boundaries of the dioceses, the nominations of bishops and parish priests.[1] Concordats resulted from the struggles between the civil and ecclesiastical authorities in the Middle Ages; they were compromises between Church and State. Two or three instances will suffice to show the importance of these agreements. The Concordat of Worms in 1122 between Calixtus II. and the Emperor Henry V. settled the long-disputed question of investitures. The Concordat of Vienna in 1448 between Nicholas V. and the Emperor Frederick III. marked the triumph of the Papacy after the Council of Basle. The Concordat of 1516 between Leo X. and Francis I. of France, which lasted till the outbreak of the French Revolution, regulated the relations of France and the Church for nearly three centuries; and lastly the Concordat of July 15, 1801, between Pius VII. and Napoleon Bonaparte, took the place of that of 1516, and was terminated by the *Loi de séparation* of December 9, 1905. Whether the law which thus dissolved the union of Church and State was such a denunciation as is required for the termination of an international treaty, and whether the relations between France and the Holy See are merely suspended or entirely dissolved by the recall of the Apostolic Nuncio, turns entirely upon the view taken as to the international position of the Pope and the nature of the concordats.[2] What, then, is the nature of these concordats? Are they treaties made with the Pope as a temporal sovereign, and thus ranking with and governed by the rules ordinarily applicable to engagements entered into between States; or are they arrangements which a State makes for the regulation of its internal well-being entered into with the Pope as the head of Catholic Christendom?

[1] Bonfils Fauchille, *Manuel de Droit international public* (4th ed.), pp. 492, 896.

[2] Ernest Lémonon, "Les Rapports de la France et du Saint-Siège," *R.D.I.* (2nd series), ix., p. 415. (The 44th article of the law of December 9, 1905, repealed the law of 18 *Germinal*, An X., confirming the agreement made on 26 *Messidor*, An IX., between the Pope and the French Government.) See also Phillimore, *International Law*, vol. ii. p. 428, for the history of the relations between France and the Papacy.

There appear to be two cogent reasons why concordats cannot be viewed as treaties. In the first place the parties making them are not now (since 1870) independent sovereign Powers, and in the second, the object of the concordats is foreign to that of treaties. It is contended by M. Lémonon that the absence of temporal power is no bar to the treatment of the Pope as an international person, that he is one by reason of his position under the Italian Law of Guarantees of 1871 ; this point will be discussed subsequently. The subject-matter of concordats is, however, clearly not a matter of international law. Treaties are concerned with a State's external policy and concern its relations to other States. Concordats purport to regulate a State's internal affairs in regard to the religious worship of its own subjects. The parties to a concordat are, moreover, not on a footing of equality, a breach of it involves no principles of international law, the Pope has no armed forces with which to retaliate on a State for breach of its obligations. Failure to carry out a concordat on the part of a State appears to be merely a failure to abide by arrangements made for certain internal matters, in the regulation of which the State must be guided by circumstances. The continued maintenance of a concordat may be incompatible with the exercise of civil authority necessarily incident to sovereignty, and it is admitted that even a treaty becomes voidable under such circumstances.[1]

Viewing concordats as constitutional arrangements which States make to regulate the relations between the lay and the ecclesiastical authorities, they become subject to denunciation, modification, or even non-fulfilment without denunciation, whenever changes in the constitution or the political opinions of the State with which they are made render such a course advisable. The dissolution of a concordat may be fraught with serious consequences to the internal order of a State, but this is not a matter for international law.[2]

It will now be necessary to inquire whether the Italian Law of Guarantees of May 13, 1871, can be relied on as giving the Pope a position of international personality. Previous to the occupation of Rome by Victor Emmanuel, Italy had made overtures to the Powers and the Pope with reference to the position of Rome, and in 1868 the Italian Government submitted to Pius IX. a scheme which left him with the sovereignty of that part of Rome known as the Leonine City, having a population of about 15,000 persons. These overtures were rejected, and the complete annexation of the city was effected on October 9, 1870. Unlike previous drafts, the law of May 13, 1871, was not submitted to any foreign Power. It is a municipal statute of the Kingdom of Italy. It is not the result of an arrangement with the Pope, who has not ceased to protest against it. It has, moreover, not even the special sanctity of a constitutional law which requires special forms to be observed to modify or repeal it: it is an ordinary statute which the Italian legislature can at any time by its ordinary legislative procedure amend or

[1] Hall, *International Law* (5th ed.), p. 357.

[2] See Despagnet, *op. cit.* §§ 157-9.

repeal at will. Further, its provisions only apply so long as the Pope resides on Italian territory.

In the discussion of this law in its passage through the Italian Parliament, the *Rapporteur* stated that the draft did not recognise the sovereign character of the Pope and his exterritoriality, as to do so would be an admission of its consequences, such as claims to rights of jurisdiction and rights to conclude treaties of alliance; and a provision in the original draft which provided that the Pope should enjoy immunity from the jurisdiction of the State was suppressed.

The Law of Guarantees is in two parts;[1] the second deals with the relations between Church and State in Italy, and therefore need not be considered. The first part contains thirteen articles, and is concerned with "the prerogatives of the Sovereign Pontiff and the Holy See."

By the first article the person of the Pope is declared to be sacred and inviolable; the expression probably being the outcome of long usage and reverence for the head of the Church. This inviolability does not extend to his officials, who have on more than one occasion been proceeded against in the Italian Courts by creditors of the Holy See. The Pope is not declared to be an Italian citizen, but the death of Leo XIII. was registered before the civil authority in Rome as that of "His Holiness the sovereign Roman Pontiff, Vincenzo Giocchino Raffaele Luigi Pecci," and all the formalities required by Italian law were observed in proving his will.[2] He enjoys all the honours of a sovereign and the precedence allowed by Catholic sovereigns, "so that he would take precedence of the King if they happened to meet."[3] He is allowed to keep the same number of troops for a body-guard as before the annexation, but they are not his subjects; no Italian state-official may enter his palaces without his permission. The places left in the occupation of the Pope—the Vatican, the Lateran, and the Villa of Castel Gandolfo, his ordinary or temporary residence and places occupied by a Conclave or Œcumenical Council—are withdrawn from Italian control unless the Pope, a Conclave, or Council calls for it, but these places and the works of art and archives are the property of the Italian State. The Pope has complete liberty in the exercise of his spiritual functions; in Rome he may order notices with reference to the services of the Church and directions to the faithful to be affixed to the churches. He has the right of free communication with the Episcopate and the Catholic world and is entitled to his own post and telegraph offices in the Vatican, and may appoint the clerks. He retains complete control of the educational establishments for the clergy in Rome and the suburbicarian dioceses. Envoys of foreign governments to the Pope enjoy in the Kingdom of Italy all the prerogatives and immunities which belong to diplomatic agents by

[1] For text (in Italian), see Phillimore, vol. ii. p. 655.
[2] E. Nys, *op. cit.* vol. ii. p. 315.
[3] Westlake, *Peace*, p. 38.

international law. Offences against them are subject to the same punishments as offences against envoys to the Italian Government. The Papal envoys to foreign Powers are given in Italy the privileges and immunities accorded by international law when going and coming on their missions. Lastly, the annual sum of £129,000 is provided by the Italian budget for "the sacred Apostolic palaces, the Sacred College, the ecclesiastical congregations and the diplomatic service of the Church." This amount is only to be reduced in case the Government takes over the maintenance of the museums and library. No Pope has ever availed himself of this sum annually placed to his credit.

Such being the position of the Pope according to the Italian Law of Guarantees, can it be said that he is thereby invested with an international personality? Is he thereby a member of the international state society? The correct answer appears to be given by M. Brusa, who says: "The Pope is inviolable, but this is by virtue of an Italian statute; he has rights of legation under the same statute; he enjoys immunity as regards his residence, but this also is by virtue of the law of a particular State and not by virtue of international law."[1]

The law of one State cannot create an international personality any more than it can effectively neutralise a portion of the State's territory. If the Pope is not an international person apart from the Italian Law of Guarantees, that statute does not make him one. But though this statute has no international effect, it is nevertheless a law of international interest. It concerns the relation of Church and State in Italy and as affecting the Italian Constitution forms part of the public law of Europe, though it forms no part of public international law.[2] The Italian Parliament by enacting this law gave official recognition to the fact of the Pope's residence in Italy, and made provision for the honours to be accorded him there. The civil authority asserted its territorial supremacy while at the same time it made concessions for the purpose of facilitating intercourse between the Pope and the Roman Catholic world. Presumably the Catholic Powers were satisfied by the terms accorded to the Pope, as no protest was made to the Italian Government with reference to this law. Whether they would view with unconcern its modification, or even its total repeal and the subjection of the Pope and the Papal palaces to the Italian common law, is a matter of conjecture.

The question of the right of the Papacy to rank with temporal Powers appears to have received a definite solution by the refusal of the representatives of the Powers at The Hague Conference in 1899 to receive the Papal envoy. Italy protested against his admission on the ground that he did not represent a State interested in international arbitration. Notwithstanding the fact that the Russian project had been communicated to

[1] E. Brusa, "La Juridiction du Vatican," *R.D.I.* vol. xv. p. 134.

[2] Westlake, *Peace*, p. 38.

the Pope and his moral support had been obtained for the Tsar's proposals, his representative was excluded.[1]

The Pope ceased in 1870 to be a temporal sovereign; but long before the Papacy was stripped of its temporal power that power was a mere accessory. The Papacy was concerned not with temporal aggrandisement, but with a spiritual propaganda, and it may well be contended that the Papacy, by becoming a purely spiritual institution, free to devote itself to the furtherance of religion, has increased in authority since the Pope ceased to be the temporal sovereign of a petty Italian State.

Sovereignty in the sense in which that word is used in political philosophy is generally associated with bodies of men banded together for political objects on a definite territory. The Pope is no longer such a political sovereign as is contemplated by international law, he is no longer the head of a State. But in all countries where there are congregations belonging to the Roman Catholic Church, his authority is supreme over the consciences of the members. It is impossible for statesmen and publicists to ignore the difficulties which ensue when religious and civil duties are found to be in conflict, and States in which an important portion of the inhabitants are members of the Church of Rome frequently find it to their interest to enter into communication with the Roman Curia for the purpose of adjusting difficulties as they arise. Politics and religion are frequently closely allied; national interests are involved, Church and State at times form two opposing camps, an internal dispute may pass beyond the mere territorial frontiers and become an international one. It is enough to recall the fact that the Catholic party in several of the States of Europe, especially in Germany, France, and Belgium, has an influence which on occasion may prove decisive in matters of home or foreign policy.

Early in June 1908 the riotous behaviour of the students in the University of Innsbruck and their refusal to attend lectures, a refusal which spread to other Austrian Universities, resulted in the closing of the Universities of Vienna, Innsbruck, and Gratz. The influences producing these results afford further striking evidence of the power of the Papacy in the internal politics of Catholic countries. The Professor of Canon Law in the University of Innsbruck had published a pamphlet which the Catholic party considered to be offensive. The Papal Nuncio at Vienna demanded the dismissal of the Professor, and although the Austrian Government did not take this extreme step, the Professor was compelled to abandon his lectures, and, as before stated, the Universities were closed. The dispute spread from the Universities to the general political world, and appears to have produced a cleavage in the political parties in Austria and a possible transference of voting power in the Reichsrat which may have important consequences.

Non-Roman Catholic States, such as Germany and Russia, find it to

[1] See Despagnet, *Cours de Droit international public*, § 153.

their advantage to have agents at the Papal Court. France only withdrew her representative on the eve of the passing of the *Loi de séparation*; Austria, Spain, and many other Catholic States accredit ministers to and receive envoys from the Papal Court, and an honorary precedence is sometimes accorded to the Papal envoy by the *Corps diplomatique* in Catholic States.[1] But the fact that some States find it an aid in the art of government to treat directly with the official head of the religion to which an important number of their subjects belongs carries with it no consequence of importance in international law.

It has been suggested that resort to the fruitful field of legal fictions may result in the discovery of institutions bearing the features of international personality analogous to those claimed for the Pope, and that therefore the Papacy, if not a "natural" person in international law, may yet be ranked with the *personæ fictæ*. Creations of the Powers such as the European Commission of the Danube, the Postal Union, and other similar international institutions may possibly be compared to the fictitious or moral persons of private law; but even here the analogy appears strained. The Papacy has not been erected into a *persona ficta* of international law by reason of the fact that Roman Catholic States have continued their intercourse with the Holy See on the same footing as before its loss of temporal power. The tacit acceptance of a situation or the continuance of a practice by a certain number of States is not sufficient to create a position legally binding on other States. The international commissions and unions neither send nor receive envoys; no State accepts their presidents as monarchs; they make no treaties. They are express creations of the Powers for the better fulfilment of certain special purposes for the common benefit of all.

The Papacy is unlike these international commissions in all respects. The Pope is an *individual*. He is a "sovereign pontiff" who enters into personal relations with States by means of agents assimilated in their treatment to those sent on purely diplomatic missions. He makes agreements with States which are akin to treaties in form, but different from them in subject-matter. He is a sovereign pontiff whose subjects are in no one land and yet in all lands, at whose commands statesmen have trembled and ministries fallen. The Papacy, like the King, never dies; on the death of a Pope the agents of the Holy See need no renewal of their powers.[2] The Church of which he is the earthly head and whose unity he personifies was old before any of the States which make up the family of nations were in existence, and before the rules which they are evolving and have evolved to regulate their mutual intercourse commenced to take shape. Outside all

[1] See Pradier-Fodère, *Cours de Droit diplomatique*, vol. i. p. 249, for an interesting account of a discussion at Lima in 1878, when the majority of the *Corps dipomatique* refused to recognise the Papal Envoy as doyen. The doyen, however, with the consent of the members of the body, expressed the desire to yield the precedence to the Nuncio.

[2] Pradier-Fodère, *Cours de Droit diplomatique*, vol. i. p. 251.

States and yet working within all are the forces personified by the Pope, and guided by the Roman Curia—forces with which most Christian States have to reckon. Whether such forces are increasing or diminishing in power is a matter outside our subject. The Roman Church is a factor which is still potent in many modern States, and the Pope and his agents still play no inconsiderable part in international politics.[1]

"The Papacy is a unique phenomenon in history," says Geffcken. It refuses to fall into any tabulated arrangement of States or sovereignties. In some departments of its activities legal analogies are valueless, but in others they are extremely useful. The principles of international law relating to the treatment and privileges of diplomatic ministers appear to be applicable to Papal envoys, though they may not be capable of enforcement by the Pope. Most of the States which before the fall of the temporal power received Papal envoys have continued their intercourse with the Holy See, and by implication have guaranteed to such envoys a continuance of treatment similar to that which they received when the Pope was a temporal sovereign whose right of legation had been recognised by the Congresses of Vienna and Aix-la-Chapelle. It would be nothing less than a breach of good faith to give these agents less favourable treatment than they have by long usage received without due notification to the contrary. But they cannot claim more favourable treatment than diplomatic agents, and therefore a Papal envoy guilty of acts of interference in local politics has no ground of complaint if the State resorts to the extreme step of expulsion. The French Government expelled Mgr. Montagnini, who had been Secretary to the Papal Nuncio, from France in December 1906.[2] Diplomatic ministers have received similar treatment for serious violation of the laws of the State to which they were accredited. It is an extreme step to take, and one which has rarely been taken. More usually his passports are handed to the minister and he is requested to depart within a fixed time. On his departure, the minister's hôtel and papers are either left in charge of a

[1] The influence of the Holy See in international politics is still manifested, says the late Prof. Despagnet, in three directions: (1) It determines in certain countries the formation of a Catholic party, such as the Catholic centre on the German Reichstag. Leo XIII. gave a powerful impulse to the action of the Church in political and social questions (see the Encyclical of January 10, 1890, *De præcipuis civium christianorum officiis*, and that of May 15, 1891, *Di conditione opificum*). (2) The Pope disposes of an important means of influence in non-Christian countries by the protectorate of the Catholics there, as in the Ottoman Empire. The Treaty of Berlin of 1878 confirmed the position of France, a position which it would seem the Pope cannot alter notwithstanding the rupture of his relations with France. (3) The Pope has even in recent times acted as mediator and arbitrator, even in disputes to which Protestant Powers were parties: *e.g.* Leo XIII. mediated between Germany and Spain in 1885 on the subject of the Carolines, in 1895 he arbitrated between Hayti and St. Domingo, and in 1898 he offered to mediate between the United States and Spain (*Cours de Droit international*, pp. 168, 169 *note*).

[2] E. Lémonon, "Expulsion de Mgr. Montagnini," *R.D.I.* vol. ix. (2nd series), p. 90; *Rev. gén. de Droit int.* vol. xiv. p. 175.

subordinate official or, if there be none, an inventory of the effects is taken, and the archives and effects are sealed by the agent of some friendly Power. In the case of Mgr. Montagnini, the agents of the French Government took possession of the papers in the Nunciature. The legality of the expulsion of Mgr. Montagnini is admitted, but the action of the French Government in entering the official residence and searching for and seizing the papers therein calls for examination. When Count Gyllenborg, the Swedish Ambassador in London in 1717, contrived a plot against George I., he was expelled from the kingdom, his cabinet opened, and his papers, which furnished proofs of his guilt, were seized. The papers of Count Cellamare, Spanish Ambassador to France in 1718, who was expelled for similar reasons, were also searched and seized.[1] In the former case the *Corps diplomatique* protested against the seizure. It is certain that the seizure of papers at a minister's residence can only be justified by the existence of very exceptional circumstances. The French Government in this case entered the house which had formerly been the official residence of Mgr. Lorenzelli, the Apostolic Nuncio. In July, 1906, France had in effect handed his passports to Mgr. Lorenzelli, and recalled her ambassador from the Vatican. Relations with the Holy See were broken off. In Rome a subordinate member of the French mission was left in charge. Mgr. Montagnini had been left in charge of the archives at the house where Mgr. Lorenzelli had formerly resided. The Government suspected him of engaging in correspondence with the French bishops and several of the local clergy, with a view of preventing the carrying into execution of the *Loi de séparation*, and having arrested him and escorted him across the frontier, the *juge d'instruction*, accompanied by an official of the Foreign Office, took possession of the whole of the papers of which Mgr. Montagnini was in charge. They examined them with the view, it was said, of separating those which were of a date anterior to the rupture of relations from the papers of Mgr. Montagnini, and transmitting the former to Rome, or the agent of a friendly Power, using the others for evidence of the culpability of Montagnini. The Pope addressed a note to his representatives at foreign Courts on December 21, 1906, strongly protesting against this violation of the privilege of inviolability of the official residence of his agent. By making the distinction between the two sets of papers, France appears to have in a manner recognised the inviolability of the Nuncio's archives, but had the Nuncio been a diplomatic agent, it is hardly conceivable that the Government would have taken such a step unless it was prepared for war. When in 1887 the archives of the French Consulate at Florence were violated by a local magistrate, the French Government sought and obtained reparation from the Italian Government, and the position of a consul is far less privileged than that of a diplomatic minister.[2] Nothing but the gravest

[1] Ch. de Martens, *Causes célèbres*, vol. i. p. 154.

[2] *Journal du Droit international privé*, vol. xv. p. 53.

offence on the part of a minister could justify such a step; it is never resorted to even when an ambassador is withdrawn on the outbreak of war. But war with the Papacy in the literal sense is impossible, and nothing remained for the Pope but a protest. The occurrence brings out in the strongest relief the anomalous position of the Holy See in its relations with temporal Powers. The violation of the Papal archives cannot have been a breach of international law for reasons already stated, but unless there was a necessity approximating to self-preservation, it appears to have been a breach of the tacit understanding on which France had for so long conducted her relations with the Papacy. A Papal Nuncio, when he is received in his official capacity, should receive the treatment of a diplomatic agent. In the strict meaning of the term he is not such an agent, for like the Pope whom he represents, he is a "unique phenomenon."

TRADE DOMICILE IN WAR: A REPLY.

[*Contributed by* J. WESTLAKE, ESQ., K.C., LL.D., D.C.L.]

DR. BATY'S article on "Trade Domicile in War" in the last part of this Journal appears to call for some notice, as well of its doctrine as of its references to my writings. Both parts of the subject will be best elucidated by taking it under certain headings in which the doctrine shall have the priority:

(1) The received Anglo-American doctrine is that the condemnation of cargo depends on the enemy character either of its owner or of the house of business from which it emanates, one or the other being necessary and either being sufficient.

(2) It is further received that the enemy character of a cargo-owner depends on his domicile and that of a house of business on its situation, subject to a relaxation in favour of a cargo-owner who has taken steps to abandon his enemy domicile and any house of business connected with it, and in favour of the house of business of a cargo-owner who has taken such steps.

Here Dr. Baty's dissent begins. He makes domicile in the enemy country "the secondary criterion of enemy character in war time, enemy nationality being a primary and conclusive criterion" (p. 157). And "the possession of a neutral domicile never saved an alien enemy's goods" (p. 163). He has against him Lord Lindley, who said: "The subject of a State at war with this country, but who is carrying on business here or in a foreign neutral country, is not treated as an alien enemy" (*Janson* v. *Driefontein Consolidated Mines*, [1902] A.C. 505). Nor would it be easy to show any Anglo-American practice, other than that founded on houses of business, contrary to the doctrine of Gronovius, who, commenting on the statement of Grotius that the persons subject by the law of nations to reprisals are those who are subjects of the offending state from a permanent cause, explains that the persons domiciled in the country are intended (see *Wheaton*, §§ 318, 319).

(3) From (1) and (2) it follows and is held that a person domiciled in the enemy's country loses his share in cargo emanating from a house of business in a neutral country.

(4) From (1) and (2) it also follows and is held that a person domiciled

in a neutral country loses his share of cargo emanating from a house of business in the enemy's country.

Chief Justice Marshall and Wheaton thought the co-existence of (3) and (4) unfair. In other words, they would have liked to vary (1), so as to make the condemnation of cargo depend only on the enemy character of its owner, or only on the enemy character of the house of business from which it emanates. Lord Lindley, in the words immediately following those already quoted, said: "The validity of his contracts [those of the subject of a State at war with this country] does not depend on his nationality, nor even on what is his real domicile, but on the place or places in which he carries on his business or businesses." If it can be assumed that his lordship would like to apply to capture the rule which he lays down for contract, he will appear as sharing the opinion of Marshall and Wheaton, and as choosing (3) for the one of the two rules, (3) and (4), to be eliminated.

(5) The same tests for ascertaining domicile as in ecclesiastical and probate cases were long applied in Admiralty cases, except that in the latter, by the relaxation referred to under the head (2), the principle that native domicile easily reverts was more freely acted on, the new character being held to have been acquired as soon as the party took steps *animo removendi*. But when the civil courts found it necessary to assert the unity of domicile, they soon found it necessary to require stricter proof of its being changed, and their decisions have now entirely abandoned the view propounded by Lord Stowell in *The Harmony*, that "time is the grand ingredient in constituting domicile." It is not too much to say that in Stowell's time it was difficult to prove that a long residence in a country not that of origin did not amount to an adoption of its domicile, and that it is now difficult in the civil courts to prove that it does so. Dr. Baty traces some perception of the change as far back as the case of *Stanley* v. *Bernes* in 1831, and he quotes Lushington as distinguishing in *The Baltica* a "mercantile national character" from ordinary domicile, and telling us that it "is governed by rules particularly applicable to it alone," and as warning us in *Hodgson* v. *De Beauchesne* that "decisions belonging to [domicile during war] must be applied with great caution to questions of domicile independent of war." Yet he denies the distinction, and has not included Lushington in the list which he gives of Phillimore, Foote, Wharton, and Dicey as agreeing with me in asserting it. Only experience can instruct us whether the British prize jurisdiction will deal with domicile in a future war as Stowell dealt with it. In favour of its doing so there is the consideration which I have presented, that "the utility to a country of the industry or commerce carried on in it depends on the actual seat of the occupation, and not on its probable continuance" (*War*, p. 144).

(6) So long as the difference in the tests of a change of domicile shall continue, "commercial or trade domicile in war" will be a correct

as well as convenient expression for the kind more easily attained. It appositely marks what is treated in Anglo-American prize law as the domicile of a person considered in a commercial capacity, that is as the owner of cargo or of a house of business from which cargo emanates. It denotes, not a domicile "established for commercial purposes" (Baty, p. 160), but one judicially appreciated for purposes connected with commerce in war. That Chief Justice Marshall used the expression is a strong testimony to its logical fitness. And it is vain to argue against it that a domicile in the enemy's country, complete for the ends of civil law, would also ensure condemnation of property, for where such existed it would include a commercial domicile. What is required is a term expressing the lowest grade of residence which in the Anglo-American system will be sufficient for condemnation, and this is given us by the term attacked.

(7) Dr. Baty expresses his surprise at hearing that "domicile was a familiar conception in Admiralty when the idea of nationality was still in embryo," and says of Elizabeth's judges that they "had a pretty conclusive conception of what allegiance was, and would apply it to the determination of questions of belligerent right rather than their rudimentary notions of domicile" (p. 163). In this he is projecting backwards the error into which it has been shown above that he has fallen as to present Anglo-American law. In doing so he forgets that England was far in advance of other European countries in developing the consciousness of unity, and that Admiralty procedure aimed from the first at basing itself on the most widely accepted principle, and was indeed impelled in that direction by its being the procedure of a Roman Law court.

(8) Dr. Baty says that I "restrict to merchants" a certain "plain statement of Wheaton's" (p. 159). The only passage to which this can refer is one in which I quote Wheaton as follows: "Residence in a neutral country will not protect [a merchant's] share in a house established in the enemy's country, though residence in the enemy's country will condemn his share in a house established in a neutral country" (*War*, pp. 141, 142). It will be seen that Wheaton speaks of cases in which houses of business are concerned, and that I complete the quotation by describing the owners of such houses as merchants. Either then the allegation that I have restricted Wheaton's statement is gratuitous, or Dr. Baty regards "merchant" as a more restrictive term than "house of business."

(9) Dr. Baty says that I am "obsessed by the notion that trading is inseparably connected with war domicile," but admits that that notion "is common to most modern writers" (p. 159). I may venture to remark, on behalf of my fellow culprits as well as of myself, that the facility in asserting a change of domicile which is so referred to is displayed only in deciding questions about cargoes, and that we really are obsessed by the notion that where there are cargoes there is trading.

(10) Dr. Baty concludes, or "would" conclude, that at one time I identified belligerent domicile with carrying on business in enemy territory, but that now I take the meaning of enemy or war domicile to be the carrying on of trade or business in a certain manner (pp. 157, 158). I trust that I have never spoken of trade domicile in war as being the carrying on of trade in any place or way, or as being anything else which a domiciled person may do. To pass from the impropriety of speech to the question of substance, what is intended under that name by the great body of authority against which Dr. Baty contends, and indeed results under that name from a comparison of the Admiralty and other cases on domicile, has been sufficiently shown under the heads (5) and (6).

JUDICIAL APPEALS IN THE COMMONWEALTH.

[*Contributed by* A. Berriedale Keith, Esq.]

The Provisions of the Constitution as to Appeals.—As finally passed by the Imperial Parliament, the Commonwealth of Australia Constitution [1] provided in clause 74 that no appeal should be permitted to the Queen in Council from a decision of the High Court upon any question howsoever arising as to the limits *inter se* of the constitutional powers of the Commonwealth, and those of any State or States, or as to the limits *inter se* of the constitutional powers of any two or more States, unless the High Court should certify that the question was one which ought to be determined by Her Majesty in Council.

The High Court might so certify if satisfied that for any special reason a certificate should be granted, and thereupon an appeal would lie to Her Majesty in Council on the question without further leave. Except as provided in that section, the Constitution was not to impair any right which the Queen might be pleased to exercise by virtue of the prerogative to grant special leave of appeal from the High Court to Her Majesty in Council. The Parliament might make laws limiting the matters in which such leave might be asked, but proposed laws containing any such limitation should be reserved by the Governor-General for Her Majesty's pleasure.

By s. 73 of the Constitution, the High Court was given jurisdiction, *inter alia*, to hear and determine appeals from all judgments, decrees, orders, and sentences of (i) any justice or justices exercising the original jurisdiction of the High Court; (ii) of any other federal Court, or Court exercising federal jurisdiction; or of the Supreme Court of any State or of any other Court of any State, from which at the establishment of the Commonwealth an appeal lay to the Queen in Council.

Until Parliament otherwise provided, the conditions of and restrictions on appeals to the Queen in Council from the Supreme Courts of the several States were to be applicable to appeals from them to the High Court.

By s. 75, the High Court was granted forthwith original jurisdiction in all matters (i) arising under treaty; (ii) affecting consuls or other representatives of other countries; (iii) in which the Commonwealth was a party;

[1] Schedule to 63 & 64 Vict. c. 12.

(iv) between States or between residents of different States, or between a State and a resident of another State; (v) in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth.

By s. 76 the Parliament could pass laws conferring original jurisdiction on the High Court in any matter (i) arising under the Constitution or involving its interpretation; (ii) arising under any laws made by Parliament; (iii) of Admiralty and maritime jurisdiction; (iv) relating to the same subject-matter claimed under the laws of different States.

By s. 77, the Parliament could make laws with respect to any of the matters mentioned in ss. 75 and 76, (i) defining the jurisdiction of any federal Court other than the High Court; (ii) defining the extent to which the jurisdiction of any federal Court should be exclusive of that which belongs to or is invested in the Courts of the States; (iii) investing any Court of the States with federal jurisdiction.

The Compromise of 1900.—Clause 74, which limits almost for the first time [1] the right of the Privy Council to grant special right of appeal from a colonial Court according to its discretion, was the result of a compromise, and represented a much smaller diminution of the right of the prerogative than was originally contemplated in the Constitution Bill as presented to His Majesty's Government by the delegates on behalf of the States.

It is not necessary to go into the details of the compromise,[2] but it is important to note that one point was left undecided.

During the debates in the House of Lords on the passing of the Bill, it was pointed out, among others by Lord Russell of Killowen,[3] that while there was no appeal according to clause 74 from the High Court, except by leave of that Court, as to the special class of cases mentioned, there still existed an appeal from the decision of the State Courts to the Queen in Council, and that thereupon arose a conflict of authority, since it might be held that the decision of the High Court in a matter in which no appeal lay from it, save by its own leave to the Privy Council, should be regarded as equally final as the decision of the Privy Council in the cases brought from a State Court.

Mr. Haldane [4] also in the House of Commons argued that there was reasonable ground for the contention that the clause as it stood created the High Court in these matters as final an authority as the Privy Council itself, and he pointed out that there might thus arise a conflict of authority.

On the other side Lord James of Hereford [5] expressed very strongly the opinion that the decision of the Privy Council in such cases would prevail and must prevail. Such a decision was superior to that of any Court,

[1] For another case, cf. my *Responsible Government in the Dominions*, pp. 263, 268.

[2] See the reprint of the Parliamentary Debates in *Commonwealth of Australia Constitution Bill* (Wyman & Sons, 1900).

[3] *Ibid.* p. 109. [4] *Ibid.* p. 68. [5] *Ibid.* p. 108.

as it was the decision of Her Majesty herself as the fountain of justice, administering justice throughout her Empire, both at home and abroad.

Lord Davey[1] expressed the same opinion as Lord Russell of Killowen, but the opinion expressed by Lord James of Hereford was endorsed by the Earl of Selborne,[2] and very energetically by Lord Alverstone[3] in the Lords and by Sir R. Finlay[4] in the Commons, and that opinion was apparently accepted as correct by the two Houses.

The Commonwealth Judiciary Act, 1903.—In 1903 the Parliament of the Commonwealth passed an Act[5] to make provision for the exercise of the judicial power of the Commonwealth. By this Act a High Court was duly constituted, and provision was made for the exercise of the jurisdiction conferred on the Court by the Constitution Act.

The jurisdiction of the High Court was made exclusive by s. 38 in (i) matters arising directly under any treaty; (ii) suits between States; (iii) suits by the Commonwealth against a State or by a State against the Commonwealth; and in (iv) matters in which a writ of mandamus or prohibition was sought against an officer of the Commonwealth or a federal Court.

By s. 39 (2) the several Courts of the States were invested with federal jurisdiction in all matters in which the High Court had original jurisdiction,[6] or in which original jurisdiction could be conferred upon it,[7] except as provided in s. 38, and subject to conditions, of which the most important was that every decision of the Supreme Court of a State, or any Court of a State from which at the establishment of the Commonwealth an appeal lay to the Queen in Council, should be final and conclusive except in so far as an appeal might be brought to the High Court.

This condition was apparently intended to abolish or to deny the existence of any appeal from the Supreme Court of a State in the exercise of federal jurisdiction as of right, but no mention was made of any limitation on the prerogative right to grant leave to appeal from a decision of the Supreme Court direct to the Privy Council.

The Case of D'Emden *v.* **Pedder.**—Such was the state of the legislation on the subject when the case of *D'Emden* v. *Pedder* came before the High Court[8] on February 24, 1904. The question at issue there was the application of a Tasmanian Act (2 Ed. VII. No. 3) which provided, *inter alia*, that from January 1, 1903, there should be levied in respect of every receipt, wherever the sum received amounted to £5 and was under £50, a stamp duty of 2*d.* to a receipt given by a federal officer in Tasmania for his salary, such receipt being required to be given by the Commonwealth law and practice regulating the department to which the officer belonged.

[1] Parliamentary Debates in *Commonwealth of Australia Constitution Bill*, p. 101.
[2] *Ibid.* p. 113. [3] *Ibid.* p. 117. [4] *Ibid.* p. 70. [5] No. 6 of 1903.
[6] *I.e.* under s. 75 of the Constitution. [7] *I.e.* under s. 76 of the Constitution.
[8] 1 C.L.R. 91.

The High Court then adopted the principle laid down in the American case of *McCulloch* v. *Maryland*,[1] and decided that the Tasmanian Act must be so interpreted as not to apply to receipts given by federal officers, as otherwise the exercise of State authority would impede the operation of the federal Government. It was held by the Court that though the interference in the actual case in question with the federal Government was of a very slight character, nevertheless the principle was of great importance, and the State Act had violated the principle, which they regarded as an essential part of the Constitution, in accordance with the American decision that no State legislation must interfere with federal action.

The Income Tax Cases before the High Court.—This important principle was next brought forward in a new form, in the case of *Deakin* v. *Webb*[2] and *Lyne* v. *Webb*, which arose out of the decision of the Supreme Court of Victoria that the salary of a federal officer was liable to State income tax. The High Court re-asserted the principle laid down in *D'Emden* v. *Pedder*, that when a State attempts to give to its legislative or executive authority an operation which would fetter, control, or interfere with the free exercise of the legislative or executive power of the Commonwealth, the attempt, unless expressly authorised by the Constitution, is to that extent invalid and inoperative. The Court accordingly reversed the judgment of the Supreme Court of Victoria, and held that neither the Hon. Alfred Deakin nor the Hon. Sir William John Lyne was liable to pay income tax in Victoria.

Subsequently the respondent moved for a certificate under s. 74 of the Constitution, that the case was one which ought to be determined by His Majesty in Council. It was argued in favour of this view that the Premiers of all the States of Australia desired to support the application, that the decision affected a large number of persons in many States, and the revenue of the States, and that it reversed the decision of a Supreme Court of a State. The High Court, however, declined to grant the certificate for which application was made. The Chief Justice argued that the responsibility of deciding questions as to the respective powers of the Commonwealth and of the States had been deliberately cast upon the High Court by the Constitution. The same view was urged by Mr. Justice Barton and Mr. Justice O'Connor, who went so far as to say that he had no hesitation in saying "that if it were found that by the current of authority in England it was likely that, should a case go to the Privy Council, some fundamental principle involved might be decided in a manner contrary to the true intent of the Constitution as we believed it to be, it would be our duty not to allow the case to go to the Privy Council, and thus to save this Constitution from the risk of what we would consider a misinterpretation of its fundamental principles."

The Judgment of the Privy Council in Webb *v.* Outtrim.—The

[1] 4 Wheat. 316. [2] 1 C.L.R. 585.

decision of the High Court was naturally not at all popular with the Governments of the Australian States, and at the end of 1906 there came before the Privy Council on appeal from the Supreme Court of Victoria the case of *Webb* v. *Outtrim*,[1] which raised precisely the same point. In that case, however, the Supreme Court of Victoria, in deference to the decision of the High Court of Australia in *Deakin* v. *Webb*, had decided that a Commonwealth officer resident in Victoria, where he earned and received his salary as such officer, was not liable to assessment under the income tax of Victoria. The appellant was granted leave to appeal by the Supreme Court of Victoria, notwithstanding the provisions of ss. 38 and 39 of the Judiciary Act of 1903. The Judicial Committee reversed the judgment of the Supreme Court, disagreeing from the judgment of the High Court in the case of *Deakin* v. *Webb*.

In delivering judgment, Lord Halsbury laid stress upon the essential difference between the Commonwealth of Australia as a federation but a British Colony, and the United States of America as a pure federation and a sovereign State. He pointed out that in view of the complete failure of the analogy between the two States, it was not possible to rely on the American decisions, as such reliance had resulted in over-riding what was expressly provided in ss. 106 and 107 of the Commonwealth of Australia Constitution, which provided that the Constitution of each State should continue as at the establishment of the Commonwealth, until altered in accordance with the Constitution of the State, and that every power of the Parliament of the Colony which became a State should, until it was by the Constitution of the Commonwealth exclusively vested in the Parliament of the Commonwealth, or withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth.

At the same time judgment was given by the Privy Council on the objection which had been made as to the hearing of the appeal at all by the Privy Council. They accepted the view taken by Mr. Justice Hodges when the same objection was raised in the Supreme Court of Victoria,[2] that there was no provision in the Commonwealth Act taking away the right of the Supreme Court of Victoria to grant leave to appeal to the Privy Council, and they endorsed his view that "if the federal Legislature had passed an Act which said that hereafter there shall be no right of appeal to the King in Council from a decision of the Supreme Court of Victoria in any of the following matters, and had then set out a number of matters, including that now under consideration, I should have felt no doubt that such an Act was outside the power of the federal Legislature, and, in my opinion, it is outside their power to do that very thing in a roundabout way."

It is difficult to resist the conclusion that on both points the decision of the Privy Council was correct. The argument from analogy in the

[1] [1907] A.C. 81.

[2] [1905] V.L.R. 463, at p. 467.

case of the Commonwealth and the United States is not strong, for neither the Commonwealth nor any State is, or has been, a sovereign State in any usual sense of the word, and the dangers which might be legitimately, and were legitimately, felt in the early days of the federation of the United States as arising from the opposition of the interests of the States and the Federation cannot possibly apply to the Commonwealth of Australia, in which not only is it perfectly simple, at any rate as compared with the state of affairs in the United States, for the federal Government to secure an alteration of the Constitution, but in which any improper action on the part of a State can be controlled by the Imperial Government, either by the disallowance of legislation or by the passing of an Imperial Act, whether to amend the Constitution or to provide for some individual difficulty.

The second point, as to the effect of s. 39 (2) of the Judiciary Act of 1903, is perhaps slightly more difficult, but even there it would appear certain that the reasoning of the Privy Council is to be preferred to that of the High Court of Australia.

It is true that s. 77 of the Commonwealth of Australia Constitution permits the Parliament of the Commonwealth to define the jurisdiction of any federal Court other than the High Court, and the extent to which the jurisdiction of any federal Court shall be exclusive of that which belongs to or is invested in the Courts of the States, and to invest any Court of the State with federal jurisdiction, but that power cannot fairly be regarded as extending not merely to investing a Court of a State with federal jurisdiction, but to deciding to what extent appeals from that Court in matters of federal jurisdiction are to be allowed.

Refusal of High Court to accept Judgment of Privy Council. The Commonwealth Government was by no means satisfied with the decision of the Privy Council, and the question was again brought before the High Court in the case of *Baxter* v. *Commissioners of Taxation, New South Wales*.[1] Action had been taken in a New South Wales District Court to recover income tax under the land and income tax of that State from a federal officer, and the defendant had claimed exemption on the principle laid down in *D'Emden* v. *Pedder* and *Deakin* v. *Webb*; the Judge of the New South Wales Court, following the decision of the Privy Council in *Webb* v. *Outtrim*, gave judgment for the plaintiff, whereupon the defendant appealed direct to the High Court.

Various smaller matters were discussed by the High Court, especially as to whether the District Court were exercising federal jurisdiction within the meaning of s. 39 of the Judiciary Act, 1903, and whether the appeal was competent by virtue of sub-section (2) (*a*) of that section. But the action was held to be competent, and on the main question the Chief Justice and Justices Barton and O'Connor held that the High Court was by the Constitution the ultimate arbiter upon all such questions as to the limits

[1] 4 C.L.R. 1087.

inter se of the constitutional powers of the Commonwealth and a State, unless it was of opinion that the question at issue in any particular case was one upon which it should submit itself to the guidance of the Privy Council. The Court therefore decided that it was accordingly not bound to follow the decision in *Webb* v. *Outtrim*, but should follow its own considered decision in *Deakin* v. *Webb*, in which it had refused to grant a certificate under s. 74 of the Constitution, unless upon the reconsideration of the question, for whatever reason, it should come to a different conclusion. They assumed that the fact that the Privy Council had given a decision in direct conflict with the High Court on the same point was a sufficient reason for a reconsideration of the whole matter, but they held that there was nothing in the reasons of the Judicial Committee to throw any new light on the questions involved either with regard to the necessity for the implication of the rule of implied prohibition laid down in *McCulloch* v. *Maryland*, and adopted in *D'Emden* v. *Pedder*, or as to the applicability of the rule to the particular question.

The arguments given by the Chief Justice, by Mr. Justice Barton, and Mr. Justice O'Connor are somewhat inconclusive as against the arguments used by the Privy Council. In fact, the two parties look at the two questions from entirely different points of view, and for either condition there is much to be said without it being possible to bring the matter to a definite issue.

They argue that as the Constitution made the High Court supreme in questions of the constitutional rights of the States and the Commonwealth, unless it chose to permit a reference to the Privy Council, the Privy Council should have considered itself bound, when a case came to it direct from a State Court, to accept the judgment of the High Court. It is impossible to say that the argument is unreasonable, but on the other hand it must be remembered that the Privy Council is on other matters admittedly a superior Court to the High Court, and as Mr. Justice Higgins,[1] who disagreed from the other members of the Court, pointed out, the King in Council is on a higher platform than the High Court, although the High Court may prevent the litigant from ascending that platform. As he also pointed out, there never lay an appeal to the House of Lords from the Court of Crown Cases Reserved, yet, nevertheless, that Court would never have thought of not following a judgment of the House of Lords.

With regard to the main question as to the analogy between the Constitution of the United States and that of the Commonwealth, the Court took up the position that the Colonies, except as regards relations with foreign Powers, were practically in the same position with regard to the United Kingdom as the States of the United States to the federal Government. The King as the head of the several autonomous States was so far a separate juristic person, and conflicts might arise between

[1] 4 C.L.R. 1087, at p. 1167.

these States just as between other autonomous States which do not owe allegiance to a common Sovereign. It was too late to set up a contrary theory unless it was intended to make a revolutionary change in the concert of the Empire. To hold this, however, ignores the essential fact that though a Colony stands in practice in a somewhat similar relation to the Government of the United Kingdom as a State of the American federation to the Federal Government, yet in law its position is otherwise, for on all matters of fundamental importance the Imperial Parliament can, unlike the Federal Parliament, pass laws over-riding the laws of any Colony, a fact which cuts at the root of the analogy between the two systems of Government.

Incidentally the Court[1] expressed disagreement with the view of the Privy Council, that despite s. 39 (2) (*a*) of the Judiciary Act, 1903, an appeal still lay of right to the Privy Council from a decision of the Supreme Court of Victoria on a matter of federal jurisdiction. They argued that the action of the Parliament in ascribing to the Supreme Court federal jurisdiction while at the same time declaring that no appeal (excluding an appeal by special leave to the Privy Council) should lie to any body save the High Court was really the creation of a new Court with a definite jurisdiction, subject only to such appeal as was provided for in the Act by which it came into being, whereas the Privy Council had held that the right to appeal to the Judicial Committee, without special leave in certain cases, was a necessary incident of all decisions of the Supreme Court whatever the jurisdiction it was exercising.

The decision of the Court was dissented from by Mr. Justice Isaacs,[2] merely on the ground that he did not consider that the actual Act levying income tax was a real interference with the principle of non-interference. The income tax, he pointed out, was demanded from all citizens alike and was obviously not aimed at the federal authority, and he could not persuade himself that by reason of the impost there was actual or would probably be any diminution or impairment of service with regard to the Commonwealth. In the United States it had been thought essential to place such cases within the principle of actual interference as laid down by Chief Justice Marshall, but that was due to the fact that there existed in the United States no authority whatever to set aside a valid law but that which enacted it, while in Australia that interpretation was not essential in view of the fact of the power of reservation and disallowance of both State and Commonwealth Acts by the Crown.

Mr. Justice Higgins[3] also disagreed from the Court, but on other grounds. He held that it was the duty of the Court to follow the Privy Council, and he also disagreed with the judgment of the Chief Justice Marshall in the case of *McCulloch* v. *Maryland*.

Following the decision of the Court, the case of *Flint* v. *Webb*,[4] in which

[1] 4 C.L.R. 1087, at p. 1139.
[2] 4 C.L.R. 1087, at p. 1159.
[3] 4 C.L.R. 1087, at p. 1161.
[4] 4 C.L.R. 1178.

a request was made for a certificate to carry the matter to the Privy Council, was decided against the request for the grant. The whole Court in this case was unanimous on the ground that it would be a breach of their duty if they were to pass on to any tribunal a question covered by s. 74 of the Constitution without good cause being shown. It was held by the Chief Justice that the inconvenience caused by the existence of contradictory pronouncements by the Privy Council and the High Court could be removed by the Parliament of the Commonwealth exercising its power under s. 77 (2) of the Constitution, while he also suggested that the Commonwealth Parliament could make its grants to its servants subject to the right of the States to tax them.

Solution of Deadlock by Legislation in Commonwealth.—The suggestions in question were thought to be the only reasonable way of getting rid of a difficulty which landed all concerned in an absurd position. Accordingly there was introduced and passed in the Session of 1907 an Act (No. 8 of 1907) to amend the Judiciary Act of 1903. The important clause of the Act was the second, which provided that "in any matters (other than trials of indictable offences) involving any question however arising as to the limits *inter se* of the constitutional powers of the Commonwealth, and those of any State or States or as to the limits *inter se* of the constitutional power of any two or more States, the jurisdiction of the High Court shall be exclusive of the jurisdiction of the Supreme Courts of the States so far as that the Supreme Court of a State shall not have jurisdiction to entertain or determine any such matter, either as a Court of First Instance or as a Court of Appeal from an inferior Court."

The fifth section provided that "when in any cause pending in the Supreme Court of a State there arises any question as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States or as to the limits *inter se* of the constitutional powers of any two or more States, it shall be the duty of the Court to proceed no further in the cause, and the cause shall be by virtue of this Act, and without any order of the High Court, removed to the High Court." Provision is also made for the necessary consequential amendments in the Judiciary Act of 1903.

The Act is made, undoubtedly, in accordance with the suggestion of the Court in the case of *Flint* v. *Webb*, under s. 77 (2) of the Constitution, which empowers the Parliament to define the extent to which the jurisdiction of any federal Court shall be exclusive of that which belongs to or is invested in the Courts of the States.

It would be impossible, in view of the decision of the Privy Council in *Webb* v. *Outtrim*, for a Commonwealth Act to provide that an appeal by special leave, or an appeal without special leave, should not lie from any decision of a Supreme Court, since by the judgment of the Privy Council that provision would be an interference with the Constitution of the State and therefore be repugnant to the Constitution Act, and also to the Acts (9 Geo. IV. c. 83, s. 15, and 7 & 8 Vict. c. 69) which define the jurisdiction

of the Privy Council.[1] But by the new law the Supreme Court never pronounces a *decision* on any question in which the rights of the Commonwealth and of the States *inter se* are at issue, for such a case must now come before the High Court, which can make itself, by refusing a certificate, the final arbiter. That the law is *intra vires* the Commonwealth appears perfectly clear, and it is, if not an ideal, at any rate a sensible and satisfactory solution of a difficulty which brought both the Privy Council and the High Court into some degree of contempt. Moreover, it is undoubtedly in keeping with the spirit of the Constitution Act of 1900, which evidently intended to reserve to the High Court these constitutional cases. This determination may or may not have been wise, but it is undoubtedly that of the framers of the Constitution. There remains, however, a certain possibility of confusion even yet. In the first place the Privy Council is not compelled to require that every case shall go to a Supreme Court before an appeal can be allowed, and it is still open to the Privy Council to give special leave for appeals from any Court in a State exercising federal jurisdiction inferior to the Supreme Court. The risk, however, of this being done is very small, and for that reason it was deliberately passed over in the new federal Act.[2] In the second place, it is still open to the Privy Council to grant special leave of appeal even from the High Court as to whether the question involved does or does not raise an issue as to the rights *inter se* of the Commonwealth and the States. No case has yet arisen in which such leave has been given, but that the right exists seems unquestionable, and it is recognised by Professor Dicey in the last edition of his *Law of the Constitution*.[3] It is not, however, likely that serious difficulty will arise from this fact.

Commonwealth Legislation as to Income Tax.—Much less satisfactory has been the action taken to solve the actual dispute. Feeling in Australia has been clearly against the Commonwealth Government as to the merits of the matter. It was realised that it was unreasonable that federal servants should be exempted from taxation which is exacted from all other citizens, not on any merits of the case, but solely to gratify the abstract theory of the non-interference with the Commonwealth by State legislatures, and the Parliament therefore passed an Act in the same Session (No. 7 of 1907) to permit the taxation by the States of salaries and allowances paid by the Commonwealth.

The Act in question provides that the official salaries to officers of the Commonwealth earned in a State, and the allowances and salaries of

[1] The Order in Council providing for appeals from the Supreme Court of Victoria is dated June 9, 1860, and allows appeals as of right when the matter in dispute is over £500 in value. There is nothing to limit the generality of the Order, which accordingly automatically applied to the new jurisdiction conferred by the Judiciary Act of 1903; see Safford & Wheeler, *Privy Council Practice*, pp. 601-5.

[2] *Commonwealth Parliamentary Debates*, 1907, p. 3758. [3] P. 546.

Members of Parliament, Ministers, etc., may be taxed by a State if the taxation is not at a higher rate or to a greater extent than is imposed on other salaries of the same kind earned in the State, and that such taxation shall not be deemed to be an interference with the exercise of any power of the Commonwealth, or to be inconsistent with any Act by or in pursuance of which the salary is fixed or made payable.

The Act was no doubt passed on the advice given by the Chief Justice of the Commonwealth[1] to the effect that it is possible for Parliament to make its grants to its servants subject to the State right of taxation.

But it is very difficult, and perhaps impossible, to hold that this advice can be deemed to be legally sound. Mr. Justice Higgins[2] has very clearly set out the points at issue in his judgment in the case of *Flint* v. *Webb*, where he pointed out that if an income tax upon the salary of a federal servant were made invalid by the Constitution, the federal Parliament could not make the income tax payable without the formal alteration of the Constitution.

This opinion, which was also pressed by the Opposition in the House[3] while the measure was going through Parliament, appears to be conclusive; if the Constitution forbids interference, the Parliament cannot remove that obstacle save by an alteration of the Constitution. It would appear, therefore, to be open for any federal servant to question the legality of the Act. But, in view of the Chief Justice's remark, it is hardly likely that this step would be taken, however interesting the case would be, inasmuch as the High Court would probably find some weighty ground on which to support legislation adopted as the result of a suggestion by the Chief Justice.

The Act of 1907 may indeed be considered to have received a certain approval from the Privy Council in the case of the *Commissioners of Taxation, New South Wales* v. *Baxter* and *Webb* v. *Flint*.[4]

In that case an attempt was made to obtain leave from the Privy Council to appeal from the judgments of the High Court in the Baxter and Flint cases, which have been discussed above. Their lordships declined to grant leave to appeal, but the only reason which they gave was that before the petition could be heard by their lordships, an Act of the Commonwealth was passed expressly authorising the States to impose taxation of the kind in question, so that the controversy could not be raised again. The Board which dismissed the petition for leave to appeal was an unusually strong one, including the present and the late Lord Chancellors, Lord Macnaghten, Lord Robertson, Lord Atkinson, Lord Collins, and Sir Arthur Wilson, and it may reasonably be assumed that they did not act without the conclusion that there was a fair prospect of the Act of 1907 being held to be valid by the only Court before which it could now normally come, the High Court of Australia.

[1] 4 C.L.R. 1178, at p. 1187.
[2] *Ibid.* at p. 1194.
[3] *Commonwealth Parliamentary Debates*, 1907, p. 3875.
[4] [1908] A.C. 214.

The conclusion of the dispute was desirable, but it is certainly unfortunate that the Constitution Act should have been left in such a vague and undetermined condition, and it illustrates the disadvantage of agreeing to a nominal settlement in order to avoid delay and discussion. It is also perhaps to be regretted that the Government of the Commonwealth did not adopt the simpler and more satisfactory, and in all respects less objectionable, method of securing a formal alteration of the Constitution to make it clear that all cases as to the constitutional powers of the States and the Commonwealth, or of the States *inter se*, should be decided by the High Court alone. No doubt that course would have caused some little delay and given some little trouble, but the procedure of altering the Constitution has already been put once into force over a comparatively trivial matter, the date for the election of Senators, and it would have been more appropriate had this procedure been adopted in a case of such comparative importance as the exclusion of the Privy Council from any voice in the decision of the constitutional questions of the Australian Commonwealth.

THE GREAT JURISTS OF THE WORLD.

X. RICHARD ZOUCHE.

[*Contributed by* COLEMAN PHILLIPSON, ESQ., M.A., LL.D.]

RICHARD ZOUCHE, born at Ansty, Wiltshire, in 1590, was the son of Francis Zouche, lord of the manor of Ansty. In 1609 he became a Fellow of New College, Oxford, in 1617 was admitted an advocate of Doctors' Commons, in 1619 proceeded to the degree of D.C.L., and in the following year succeeded John Budden, the successor of Albericus Gentilis, as Regius Professor of Civil Law at Oxford. Soon afterwards he married, and resigned his fellowship. In 1623 he entered himself as a fellow-commoner at Wadham College, and two years later was appointed Principal of St. Alban Hall. He was twice elected a member of Parliament for Hythe (1621 and 1624), and in 1632 became Chancellor of the Diocese of Oxford.

From that date his activities were shared between legal practice in London and academic engagements at his University, where he also took a prominent part in the codification of its statutes (1629-33). Finally, in 1641, he was appointed to a judgeship of the High Court of Admiralty.

At the time of the Civil War his sympathies were with the Royalists, and after some opposition he was obliged to submit to the parliamentary visitors, who sought to effect a reformation of the University. Zouche was removed from his judgeship when Cromwell came to power, though he was a little later appointed one of the judges to decide the famous case of Don Pantaleon Sa. The remainder of his life was spent mostly at Oxford, and during this time he does not appear to have gained the favour of either of the political parties. On the accession of Charles II. he was restored to the judgeship of the Court of Admiralty, but died about a month later.

His contemporaries undoubtedly appreciated his excellent qualities as a man, his high distinction as a scholar, and his learning and authority as a writer. Of his *Elementa Jurisprudentiæ*, Bishop Sanderson said that "no man could read it too often or commend it too much." Anthony Wood [1] gives a delightful portrait of him: "He was an exact artist, a subtile logician, expert historian; and for the knowledge in, and practice of, the civil law, the chief person of his time, as his works, much esteemed beyond the seas (where several of them are reprinted), partly testify. . . . As his

[1] *Athenæ Oxonienses.*

birth was noble, so was his behaviour and discourse; and as personable and handsome, so naturally sweet, pleasant and affable. The truth is, there was nothing wanting but a forward spirit for his advancement, but the interruption of the times, which silenced his profession, would have given a stop to his rise had he been of another disposition."

The Writings of Zouche.—The books Zouche published indicate a remarkable versatility in range of subjects, as well as a considerable volume of work. Like his countrymen Selden and Bacon, to name no others, he was in some respects a product of the Renaissance, an age in which writers and thinkers were loth to limit their activity to work of specialisation, but whose thirst for knowledge led them to wider fields, and to seemingly recondite or strange subjects. The publications of Zouche comprise a poem, a play, a book of miscellaneous maxims, handbooks for university disputations, and works of a more polemical nature;[1] but his most important production is a systematic survey of the whole field of jurisprudence, followed by a more detailed examination of its various branches. Thus the basis of his writings on law is the *Elementa Jurisprudentiæ*, largely founded on Roman Law both in method and subject-matter. He introduces the twofold division of Rights (*Jus*) and Remedies (*Judicium*), and adopts this method systematically and logically—if somewhat automatically—in his subsequent exposition of the various departments of law, dealt with in a regular series of treatises (*descriptiones*)—"feudal," "sacred," "maritime," "military," and "fecial" law. Of all these dissertations, those dealing with questions of international law are the most important—indeed, his standing as an eminent jurist is mainly due to them: *Juris et judicii fecialis sive juris inter gentes et quæstionum de eodem explicatio* (Oxford, 1650), being a concise outline of a large body of international law, and *Solutio quæstionis veteris et novæ, sive de legati delinquentis judice competente dissertatio*[2] (Oxford, 1657), which is a fuller treatment of one of the special matters of the preceding work, viz. the position of ambassadors in the law of nations. The present essay is concerned almost exclusively with Zouche as an international jurist.

To obtain a juster and more accurate appreciation of Zouche's position it will be well to consider briefly the work of his English predecessors in the field of international law, and the nature of interstatal relationships at the time he wrote.

Relation of Zouche to his English Predecessors.—The early development of international law was a laborious process, the main counteracting agencies to its quicker advancement being the practices of feudalism and the dominating influence of the Church. Towards the close of the fifteenth century, and in the early part of the sixteenth, we see the rise of great States, and,

[1] For a complete list of his works see Professor Holland's article on Zouche in the *Dictionary of National Biography*.

[2] These two works will henceforth be referred to, respectively, as *De jure inter gentes* and *Solutio quæstionis*.

generally, more distinct lines of demarcation between them. The Pope's political power was largely overthrown; and the internal organisation and external relationships of States are to some extent systematised under the guidance of the principles of sovereignty and autonomy. Thus the practices of war became somewhat regularised, and with the establishment and maintenance of standing armies a body of rules relating to military discipline grew up; further, through the increased interstatal communication many usages concerning ambassadors and envoys came to have legal force. At the head of this movement are to be found Spain, France, and England. In Spain, Alfonso IX. drew up the *Siete Partidas*, a manual of military laws, to which Zouche occasionally refers; in Italy, various treatises are produced, *e.g.* by Gratian (the *Decretum*), Thomas Aquinas, Bartolus, Baldus, and others; in France we find already, at the end of the fourteenth century, *L'Arbre des Batailles* of Honoré Bonet; in Germany early attempts at similar disquisitions are made by Gabriel Biel in his *Collectarium*.[1]

In England the unification of the country began with the Norman Conquest; some two centuries later the principle of Parliamentary representation was firmly established; administration of justice was organised; to Henry VII. is due the innovation of permanent embassies; under Henry VIII. foreign politics occupied much attention, canon and Roman law were the predominant systems. Before this, Oxford had had a school of law; and with the decline of canon law at the Reformation, Henry VIII. founded chairs of Roman law both at Oxford and Cambridge; and at the time of Elizabeth the institution of Doctors' Commons was often consulted in regard to international affairs. Already in the fifteenth century in England writers issued important original monographs, or adaptations and translations. Nicholas Upton[2] followed Bartolus[3] in his discussions on knighthood, and on matters of war refers to Gratian and Johannes de Legnano;[4] he deals with duels and reprisals, on which latter question he cites the authority of Bartolus, Guy de Baiso, Baldus, and others; and finally as to prisoners adopts the severe measures in the doctrine of Baldus. In 1475 appeared anonymously *The Boke of Noblesse*, which inquires "whether for to make werre uppon christen bloode is lawfulle," and follows the authority of Honoré Bonet's work *L'Arbre des Batailles*, which was afterwards translated by Sir Gilbert Hay. Bonet held that war is primarily a relation between State and State. In the next century we get the great work of Albericus Gentilis.[5] A new phase of literary activity was manifested in the dissertations contained in the general memoirs of Government officers, and embodied as answers to particular questions proposed to them in their

[1] Cf. E. Nys, *Notes pour servir à l'Histoire littéraire et dogmatique du Droit international en Angleterre* (Bruxelles, 1888).

[2] *De studio militari libri quatuor.*

[3] *De insignis et armis.*

[4] *De bello, de represaliis, et de duello.*

[5] *De legationibus libri tres* (London, 1585); *De jure belli* (London, 1588-9).

official capacity: *e.g.* Valentine Dale's answer as to wars which have commenced illegally and without sufficient cause;[1] again, his opinion of a book in which Don Antonio defended his claim to the Portuguese throne; and other matters relating to piracy. The case of Leslie, Bishop of Ross, was referred to David Lewis, Valentine Dale, William Drury, William Aubrey, and Henry Jones, who were all advocates of Doctors' Commons; and in the case of Mary Stuart, Dale was consulted, and drew up a written opinion.[2] There were besides, before Zouche, a large number of English writers who contributed fuller treatises on special subjects—*e.g.* Matthew Sutcliffe, William Fulbecke, William Welwood, John Selden, Richard Bernard, and Sir John Boroughs, who will be referred to below in connection with the different divisions of Zouche's work.

Zouche has been claimed by some writers to be the second founder of the law of nations, mainly, it may be, by virtue of his great terminological innovation—*jus inter gentes*—to replace the older, more ambiguous, though universally employed expression, *jus gentium*. Hence he is often referred to in writings on international law in connection with his new formula, which seemingly indicates a new point of departure, and a new, a more modern conception of fundamental doctrine. But of his views in general little has been said by writers. By adopting the positive method he at once shows himself to be in affinity with the English school. He is largely concerned with the citation of examples and precedents;[3] he does not undertake a scientific development of doctrine. Perhaps, having regard to the nature of the time in which he lived, the unsettled affairs, the contentious international politics, and more or less precarious interstatal relationships, he was too wise to develop doctrine, to rush to abstract generalisations, and to theorise in *a priori* principles which could not be made to fit the actual conditions, especially so in a strikingly transitional epoch. The English school is eminently practical; it considers policy and rules of law in relation to the particular environment and to the demands of necessity. Thus, Selden's *Mare clausum*, a reply to Grotius' *Mare liberum*, and his *De jure naturali*, adopt the positive method almost entirely. Selden's method is characterised by M. Scelle as an "aboutissement brutal de la doctrine positive."[4] The same positive tendency is likewise manifested in the great philosophical writers, Bacon, Locke, and Hobbes, though in other respects there are profound differences between them. There had for some time been at Oxford an influential juristic school; apart from foreigners, like Gentilis, who from time to time taught there, there was a considerable group of writers, of whom may be mentioned Valentine Dale, Sir Julius Cæsar,

[1] *Calendar of State Papers*: *Domestic Series of the reign of Elizabeth*, 1581-90.

[2] Cf. Strype, *Annals of the Reformation*, III. pt. i. p. 530; pt. ii. p. 398.

[3] "On reconnaît à ce signe l'un des représentants de la doctrine positive." *Fondateurs du droit international* (Paris, 1904); article on Zouche by G. Scelle, p. 325.

[4] *Ibid.* p. 326.

William Fulbecke, William Welwood; and after these came Zouche, to sum up, as it were, the whole school. A more or less similar spirit pervaded the work of all of them; all emphasised the importance of usages and practices, of treaties, conventions, and of the diverse phenomena consequent on political development. In the more theoretical portion of their work, whenever they attempted such treatment, the Roman law was called in to provide authority and furnish analogies; but recent events were at no time disregarded.

Zouche and the Roman Law.—The Roman law has ever been an invaluable aid in the development of international jurisprudence, not to mention the municipal law of modern States. Indeed, it is in many respects the very foundation of the law of nations. There are very few writers and lawyers who have not been profoundly influenced by it.[1] The Church had promoted the study and application of the Justinian jurisprudence. It was ranked with the canon law by the Popes and the pontifical Courts. In Italy the study of Roman law had long been maintained; the school of Bologna and the Glossators (1100–1260) had European fame; and there was further a great revival during the Italian Renaissance, which soon extended to other countries. In France rules of Roman law had predominated over Germanic laws and customs, and early in the twelfth century the Justinian Code was there translated. The manual of Alfonso IX. of Spain—the *Siete Partidas*—was to a large extent founded on the Roman law. German students attended the schools of Italy as early as the twelfth and thirteenth centuries, and in the sixteenth century there were many famous foreign teachers in Germany. In Holland a school of jurists arose with the foundation of the university of Leyden in 1575; and in the following century flourished men like Grotius, Vinnius, Huber, and Van Leuwen. As for England, Selden states that the Justinian law was introduced from Bologna in the twelfth century. From the arrival of Vacarius, invited by Archbishop Theobald in the reign of Stephen to teach Roman law at Oxford, down to the death of Edward I., the civil law exerted much influence in England. Bracton's direct indebtedness to it is as great as his esteem of it.[2] In Fleta a good deal of the substance of the Institutes is adopted. Similarly, Coke's recognition of Bracton at the same time implies an acceptance of the Roman law. Various causes operated to extend the application of this foreign law, such as the influence of the universities, notably the Oxford school of civil law; the recognition of Roman law in ecclesiastical Courts; the growth of commercial intercourse and acquisition of property, through which the defects and omissions in the common law had to be

[1] Cf. the observations of Bodin: *De la République* (Paris, 1577), l. v., c. vi.: Leibnitz, *Opera*, t. iv. p. 254; Sir Robert Wiseman, *The Law of Laws, or Excellency of the Civil Law above all other Human Laws whatsoever* (London, 1686), p. 110.

[2] Cf. C. Güterbock: *Henricus de Bracton und sein Verhältniss zum römischen Rechte* (Berlin, 1862); translated by B. Coxe (Philadelphia, 1866).

remedied; and finally the intrinsic nature of the Justinian legislation itself, the comprehensiveness of its subject-matter, the universal applicability of its principles and generalisation.

The influence of the Roman law on Zouche is manifested throughout his work. His standpoint, his divisions, his classifications, his conceptions, are greatly affected thereby. Thus he divides the law of peace and of war each into four categories—*status*, *dominium*, *debitum*, *delictum*. The Justinian rights and obligations of citizens are transferred to the case of States, and immediate application and inference of principles are made just as though the conditions were alike in the two cases. Zouche was not, of course, alone in such somewhat undiscriminating imitation; his masters Gentilis and Grotius had done the same. Thus, in the *Mare liberum*, Grotius speaks of persons and goods, contracts and actions, possession and transference of property, as though he were dealing with a house or a horse.[1] But in Zouche a certain self-emancipation from the tradition is manifested, inasmuch as he gives many recent or contemporary examples of practice—and this Grotius does not do.

Relation to his Age.—Bynkershoek has often been greatly praised for his use of more modern instances; but Zouche adopted this practice long before; indeed, the subsequent growth of international law is greatly indebted to his bold innovation—a feature which cannot be too much emphasised. It is true that this practice is already found in Gentilis; but Zouche was the first to adopt it systematically and persistently in the entire range of his work. Henceforth the law of nations acquires a vitality and elasticity which are absent in the earlier scholastic methods with their undiscriminated accumulations of learning. Zouche, however, unlike Bynkershoek, failed to draw definite inferences from his modern examples. He analyses them, states the issue clearly, gives arguments for and against (much in the same way as disputations were conducted in his university), but usually avoids giving his own opinion in favour of the one side or the other, or suggesting any other course. It cannot be said that this attitude was due to judicial incapacity; it was rather due to his aversion to dogmatic finality in view of the stirring flux of events in Europe at the time he wrote, his recognition of the then transitory character of international relationships, the reconstruction of national polity, and the inevitable transformation of rules of practice pertaining thereto.

The Thirty Years' War, beginning as a strife of Bohemian rebels against Ferdinand the Hapsburger, grew into the great conflict between Roman Catholicism and Protestantism, between imperialism and territorial sovereignty.

[1] Nowadays, a similarly false analogy is sometimes made by writers (seduced by certain superficial likenesses and indifferent to fundamental differences) in considering the evolution of a State or a nation in the same way as they would consider the organic development of an individual, and the economic and intellectual organisation of his life.

In the sphere of international law the consequences were far-reaching. From the fifteenth century to the middle of the seventeenth, the worst features of a Machiavellian diplomacy prevailed, and almost shattered the very foundations of international law. The interests of monarchs were then by no means identified with those of their countries; treaties were violated or modified at the pleasure and for the convenience of the signatory States. But with the decline of feudalism in the sixteenth century, the gradual overthrowing of spiritual authority, the unification of States, their assertion of autonomy, the increasing body of writings by jurists and publicists, the way was prepared for the establishment of the principles of the Peace of Westphalia, which procured an international system of independent States, with an exclusive territorial jurisdiction for each, and by a recognition of the principle of equilibrium of the greater States laid the very basis of modern international law. During and after the Thirty Years' War certain Powers had been quickly developing their maritime resources, which were further promoted by colonial expansion. Questions of neutrality and of the freedom of the seas were raised; the exact status of ambassadors and envoys was examined; matters of military discipline and of naval warfare were discussed; and generally the eminently practical and universally utilitarian character of international law was grasped once for all. The affinity of Zouche to this movement will be seen when we consider more closely the various departments of his work; and in this connection it will be well to note that the Peace of Westphalia was signed in 1648, and that in 1650 appeared the first edition of his principal work, the *De jure inter gentes*.

Zouche's Method and General Treatment.—Just as all his works adopt one method of exposition and arrangement, so the whole of his system is based on one central principle, one originating factor—the rationale of human relationship, the *ratio communionis humanæ*.[1] This is the root idea of his *Elementa Jurisprudentiæ*, and his subsequent writings are further developments and extended applications of this. First he deals with the general principles of law (*juris et judicii principia generalia*) appertaining to the *communio in genere*, then with the relationships between private persons (*communio quæ inter personas privatas intercedit*), between the sovereign and his subjects (*communio quæ privatis cum principibus intercedit*); after these he devotes treatises to *communiones speciales—e.g. sacra*,[2] *militaris*,[3] *maritima*,[4] *feudalis*[5]; and finally he takes up in his most considerable work[6] the relationships subsisting between nations, *eorum quæ ad communionem, quæ inter diversos principes aut populos intercedit, conducunt*. In all these dissertations he considers first the *Jus* (rights), the propositions of law generally accepted, *quæ sunt minus dubitati juris*,

[1] See preface to *De jure inter gentes*.
[2] *Descriptio juris et judicii sacri*.
[3] *Descriptio juris et judicii militaris*.
[4] *Descriptio juris et judicii maritimi*.
[5] *Descriptio juris et judicii feudalis*.
[6] *Descriptio juris et judicii inter gentes*.

then the *Judicium* (remedies), comprising questions which give rise to controversy, *ea quæ videntur juris controversi*.[1] In conformity with this plan, he takes up, in his work on the law of nations, first the *Jus*, under the twofold aspects of peace and war. After a preliminary consideration of the definition and principal sources, he subdivides questions of peace into those relating to (1) *status*, relation of sovereign and subjects, relative position of states; (2) *dominium*, possession and how acquired; (3) *debitum*, envoys, ambassadors, treaties, alliances; (4) *delictum*; and, again, having examined the kinds of war and whether declaration is necessary, he classifies questions of war likewise under (1) *status*, kinds of military power, kinds of enemies, (2) *dominium*, capture, postliminium, (3) *debitum*, military conventions, access, truce, treaty of peace, hostages; (4) *delictum*, breaking military conventions, irregularities in warfare, etc. Then comes the second portion of the book, the *Judicium*. After touching on the settlement of disputes, and on questions of jurisdiction, he again deals first with peace: (1) *status*, sovereignty, relation of sovereign to subjects, nationality; (2) *dominium*, theory of occupation, territorial seas; (3) *debitum*, precedence of princes, ambassadors, promises of a sovereign, whether a successor is bound by previous treaties; (4) *delictum*, whether an offence against a subject is an offence against his sovereign, extradition, intervention, requisition of foreign vessels, violation of treaties. Lastly comes war, with introductory consideration as to its legitimacy, who may undertake it, urgency of pacific settlement; then, as before: (1) *status*, who may be considered an enemy, domicile; (2) *dominium*, how property is acquired, maritime captures, neutral goods on enemy vessels, contraband, right of visit; (3) *debitum*, single combats, prisoners, ransoms, pursuing the enemy on neutral territory, when an ambassador may be arrested, conditions of capitulation by generals, treaty of peace made by them, treaty made in captivity, hostages, truce, safe-conduct; (4) *delictum*, whether declaration is necessary, hostages, whether *lex talionis* is justifiable, offensive practices in war as to prisoners, women, sacred places.

The various matters under *Jus* he considers more or less categorically, those under *Judicium* he puts in the form of questions. He offers no explicit solutions to these, claiming only to set side by side diverse opinions and many examples of fact and precedent, from which he hopes the reader will be able, by a process of inductive or Socratic reasoning, to form his own conclusions.[2] His citation of authorities is extensive and systematic, and in every case he gives the exact reference. Above all publicists and jurists,

[1] See preface to *De jure inter gentes*.

[2] As he says in his preface, *loc. cit.*, "a statuendo quicquam pro sua sententia abstinuit, consultius Academiæ Socraticæ institutam imitari ratus, quæ post causas et rationes allatas et quid in unaquaque parte dici possit expositum, audentium judicium integrum atque liberum reliquit."

"authores historico jure periti," his guides are Gentilis and Grotius; but apart from ancient writers and the Digest, he frequently refers to Bodin, Conradus Brunus, Paschalius, Besoldus, Ayala, Bartolus, Hotman, Camden, Selden, Welwood, and many others, and mentions also the laws of Rhodes, the *Siete Partidas* of Alfonso IX., and the *Consolato del Mare*. He is not however, a servile follower of Grotius: in the first place, as has been already pointed out, he deals with peace before war, emphasising the prior interests of peace; and secondly, he attaches great importance to contemporary facts and events.

Definition and Sources of International Law.—He defines international law as that which controls the relationships between heads of States or sovereign peoples, either in peace or in war. The adoption of this law is due to the force of custom operating in conformity with reason, and it is in accordance with its principles and behests that nations are distinguished, kingdoms founded, commerce established, and war introduced.[1] This definition and the fundamental notions underlying it constitute an advance of the greatest importance. He contrasts with it the Roman conception of the *jus gentium*, and the definition of Gaius.[2] Tracing the sources, he briefly refers to the Roman fecial law as having been based on the *jus naturale*, then adds to this two other sources—the law arising from customs, and that arising from consent, as evidenced in treaties, pacts, alliances, leagues, conventions, etc.[3]

In his *Solutio quæstionis*, the later work on the legal position of the ambassador and his suite, he states that the privileges of ambassadors are based not on the law of nature but on the consent of nations—*i.e.* on the *ius gentium voluntarium*, arbitrary law built up as occasion and circumstance demand ("usu exigente et humanis necessitatibus").[4] Natural law and arbitrary law may agree or may conflict; where there is a conflict, universal abstract principles may have to yield to narrower practical interests. Similarly, Selden, in his *Mare clausum* (1635), and in his *De jure naturali et gentium* (1650) (the latter published in the same year as Zouche's *De jure inter gentes*), distinguishes between natural law and voluntary law; the latter he terms *ius gentium interveniens*, and also *ius gentium secundarium*.[5] "Interveniens autem jus gentium dicimus quod non ex communi pluribus

[1] "Jus inter gentes est, quod in communione inter diversos principes, vel populos penes quos est imperium, usurpatur. Quod scilicet, moribus rationi congruis inter gentes plerasque receptum est, et id in quod gentes singulæ inter se consentiunt, et observatur inter eas quibuscum pax est et inter eas quibuscum bellum" (Part I. s. 1).

[2] Part I. s. 1, pp. 1, 2.

[3] "Deinde præter mores communes pro jure etiam inter gentes habendum est, in quod gentes singulæ cum singulis inter se consentiunt, utpote per pacta, conventiones et fœdera, cum communis reipublicæ sponsio legem constituat, et populi universi, non minus quam singuli suo consensu obligentur" (Part I. s. 1, p. 2).

[4] C. i.

[5] This expression he borrowed rom Vasquez.

imperio sed interveniente sive pacto sive morum usu natum est, et jus gentium secundarium fere solet indigetari." [1]

(*a*) **International Law in Time of Peace.**[2]—Zouche first discusses certain general questions (with numerous references to Aristotle, Pomponius, St. Augustine): whether it is possible and desirable to be at peace with everybody, for example with barbarians; whether greater advantages are produced by peace or war; whether we ought to prefer an unjust peace to a just war, etc. Peace, defined as ordered concord (the "ordinata concordia" of St. Augustine), is the normal condition of nations, and its interests predominate. It is of two kinds: *pax moralis*, between superiors and inferiors, *e.g.* between the head of a family and the other members; *pax civilis*, between equals, *e.g.* between cities or States. He admits, however, an inequality *de facto* between the existing States, and this condition points to the urgent necessity of maintaining peace, for the purpose of general intercourse, hospitality, and, above all, commerce. Bodin had indicated a certain precedence amongst sovereigns; thus, after the Pope he placed the Emperor, and then the French sovereign, who had recently defeated the claims of Spain.[3]

Territorial Sovereignty, and State Policy.—Does the fact of contracting an unequal treaty or accepting protection modify the status of a prince or State? According to Proculus, Zouche points out, protection does not mean dependence, and the liberty of the *de facto* subordinate State must be respected. Sylla is quoted to the same effect: "clientes sunt sub patrocinio, non sub ditione." The case of Mary Stuart suggested the question whether a sovereign on his own territory had power over another. For the negative he points out that Mary was a free and independent princess, and could not be guilty of lèse-majesté ("in majestatem peccare non posset"),[4] since she was the equal of Elizabeth; for the affirmative, that there cannot be in one kingdom two independent princes, and, besides, the equal may submit to the judgment of his equal either by express or by tacit consent, or through delictual obligation. By modern practice those who have not supreme power cannot send ambassadors; thus, Elizabeth refused to receive an ambassador sent by the Duke of Alba, as he was not accredited by the Spanish sovereign. The criterion of sovereignty is not merely the possession of territory, but the government of subjects. Territory may be acquired (1) by occupation, if it never belonged to any one, (2) by prescription, if previously abandoned, (3) by donation, (4) by succession. Under the last head he examines different modes of the devolution of the Crown. These matters were "burning questions" in his time, in view of the accession of William of Orange, and the Spanish Succession.

[1] *Mare clausum*, lib. i. c. 3.

[2] It is not intended to follow here Zouche's order and arrangement of subject-matter but it will be more profitable to treat it under the two heads of Peace and War.

[3] *De la République*, lib. I. c. ix.

[4] Part II. s. 2.

With regard to sovereignty over the sea,[1] Zouche quotes Ulpian and Paulus as being mutually contradictory in their conception of occupation, and follows Grotius in admitting the right of exclusive jurisdiction of a State over its territorial seas. This subject is not considered by him to any large extent, as it had been fully treated before by Grotius, Selden and others.

If a State inordinately augments its military or naval forces, and its warlike equipment generally, such a proceeding, whilst not necessarily implying a violation of any specific law of nations, may nevertheless amount in reality to a molestation of, or a hostile or unfriendly act to, a neighbouring State; in which case it is contended,[2] with Grotius, that the latter State has the right of intervention. The passage in Bacon's *Essays*[3] on this point may be recalled: "For there is no question but a just fear of an imminent danger, though there be no blow given, is a lawful cause of war."

Each State has the right of self-preservation, and therefore the right to prevent such practices on the part of others as may tend directly or indirectly to injure it. The question is asked:[4] May one prohibit the passage over one's territory of troops of neutrals or forbid the commerce of their subjects? He answers that such prohibition may be exercised in three cases: "(1) Si cum armatis transitus requiratur . . . (2) Juste negatur transitus iis qui hostes adducunt . . . (3) Si non a principe territorii petatur transitus. . . ."[5] As to commerce, Zouche accepts the rigorous doctrine of his contemporaries. It may be prohibited if it is calculated to debilitate or impoverish the State in any way; thus anything tending to weaken morals or religious faith may be forbidden, as also the exportation of gold and silver.

If disputes should arise between sovereigns or between their respective subjects, they may be settled pacifically by permanent judges, or by reference to arbitrators, or by acceptance of the existing *lex loci*, or by following the opinion of learned men.[6] He adds, moreover, that citizens may *prima facie* be under the jurisdiction of foreign courts, by reason of their committing a crime in a foreign country. These propositions, set forth at a time when nations were only too ready to rush to arms, have received high commendation from later writers.[7]

Nationality and Domicile.—The doctrine of nationality was very ill-defined and obscure in the time of Zouche. He refers to the policy of

[1] Cf. the present writer's essay on Bynkershoek in the *Journal o Comparative Legislation*, August 1908, pp. 34 *et seq.*

[2] Part I. s. 5.

[3] The whole series published in 1625.

[4] "An iis quibuscum est amicitia transitus sit denegandus?" (Part II. s. 5, p. 112).

[5] Part II. s. 5, p. 112.

[6] "Judicium inter gentes est quo de controversiis inter ipsas earumve subditos statuitur, utpote (1) cum certos judices habent; (2) cum in arbitros comp romittunt, (3) cum ratione loci iudicium subeunt, (4) cum prudentes de iis censura ferunt" (Part II. s. 1, p. 54).

[7] Cf. for example, E. Cauchy: *Le Droit maritime international* (Paris, 1862).

ancient Rome,[1] where it was a constitutional maxim that acceptance of foreign citizenship by a Roman citizen operated *ipso facto* as a disfranchisement of his former rights.[2] In Greece and in other ancient States a different custom prevailed. With reference to modern times, it has in some quarters been maintained that an individual can enjoy concurrently the rights of citizenship of two States. Thus Heffter[3] says that to be a subject of several States may be tolerated: "Unterthan mehrerer Staaten zugleich kann man persönlich nur durch Duldung sein." Though special exceptions may be made for urgent reasons, the general rule is now admitted that "a man can have only one allegiance"; and this law is laid down by Zouche with precision and clearness. Referring to the propriety of a decision in the French Courts on a question of domicile, he observes: "Fortassis vero id respexerunt, quod quamvis incolatus et domicilium in externo regno sufficiunt ad constituendum aliquem subditum jurisdictioni et præstandis muneribus obnoxium non tamen sit satis ad constituendum civem, ut eorum privilegiorum civilium sit particeps quae in regno natis competunt, nisi specialis allectio supervenerit."[4] Heffter remarks that Zouche goes too far in denying outright the possibility of more than one allegiance;[5] and also refers to the practice of various ancient States (though not Rome), and to more recent admissions.[6] But modern views follow Zouche's doctrine. In 1848, for example, when Lord Brougham was desirous of naturalising himself as a Frenchman, the French Minister of Justice, M. Crémieux, informed him that to do so would necessarily entail a renunciation of his rights as a British subject.[7]

Other kindred questions are discussed by Zouche, in addition to matters which now belong to the domain of private international law. He distinguishes emigration induced by want or oppression, from the deliberate founding of colonies, by which, according to Thucydides, a new people is formed not subject to the mother-country but her equal. If one sovereign is at the head of two different countries, does an individual born in one of them enjoy full rights of citizenship in the other? He reports an affirmative answer in the case of Robert Calvin, a Scotch subject, and John Bingley, an English subject, with regard to succession to some property in London at the accession of James of Scotland to the English throne.[8] May a citizen

[1] Part II. ss. 2, 13.

[2] Cf. Cicero, *Pro Balbo:* "Sed nos (Romani) non possumus et hujus esse civitatis et cujusvis præterea. . . ." (c. 12).

[3] *Das europäische Völkerrecht* (Berlin, 1867), p. 114.

[4] Part II. s. 2.

[5] "Jedoch ist dies zu weit gegangen. Alles hängt von dem Willen der Einzelstaaten ab" (*ibid.*).

[6] Referring, or example, to Moser, vers. vi, 52, and to Günther, ii. 326.

[7] "La France n'admet pas de partage: pour devenir Français il faut cesser d'être Anglais. Si la France vous adopte pour l'un de ses enfants, vous n'êtes plus Lord Brougham, vous devenez le citoyen Brougham."

[8] Part II. s. 2, p. 65.

renounce his allegiance and leave his country without permission? With Cicero and Tryphonius, he appears to hold the affirmative, unless it is to avoid payment of debts or military service; but, with Grotius, he says it is otherwise in the case of collective desertion.[1] A person having lived a long time in a foreign country and established a family there is not to be necessarily considered as having renounced his country of origin, unless he formally naturalise himself; a decree of the Parliament of Paris is cited to this effect. An honour conferred on a subject by a foreign sovereign need not of necessity be recognised in his own country. With regard to national jurisdiction, Zouche refers to the important question of extradition. He points out that this is not a matter of established law, but that special treaties are often entered into on the subject by the States concerned.[2]

Ambassadors and Diplomacy.—Respect and good feeling ought to exist between the heads of friendly States and between the nations themselves. Courteous relations may be established either by the sovereign in person or by means of ambassadors and envoys, so that the interests of the respective States may be adjusted pacifically. Envoys charged with a special mission by virtue of the principle of *Jus congressus sive colloquii civilis* must be persons of rank or distinction.[3]

Before and at the time Zouche wrote, there were really no fixed rules as to the rights of ambassadors and their suites. Divers doctrines had been advanced. It was contended by some writers and publicists that ambassadors alone enjoyed absolute immunity, by others that their suites must be placed in the same category, and again by others that under certain circumstances the local jurisdiction may be lawfully exercised.[4] Grotius insisted on the principle of exterritoriality, with its necessary implications. This legal fiction had many adherents, but was not by any means generally accepted. The opinion of Gentilis [5] was not quite decisive, but he inclined to the view that an ambassador is amenable to the territorial law, though in the special case of conspiracy he may be sent back to his sovereign. This procedure was adopted in the case of Mendoza (1584). Soon after this date an anonymous pamphlet [6] was issued in England, urging that an ambassador or even his sovereign, if found guilty of conspiring against a foreign State on the latter's territory, may be put to death. Later, under James I., Sir Robert Cotton denied total exemption; and similarly William Welwood

[1] Grotius, l. ii. c. 5, § 24.

[2] "Et proinde in fœderibus sæpe cautum est ut subditi delinquentes, si petantur remittantur" (Part II. s. 5).

[3] "Debitum, sive officium, inter eos quibuscum pax est, est quod præstandum est, inter diversos principes, vel populos quibuscum pax intercedit, veluti jus congressus, legationis, conventionis, et fœderis civilis, cui fides interponitur, vel jusjurandum solenne adhibetur" (Part I. s. 3, p. 10).

[4] Cf. *Journal of Comparative Legislation*, August 1908, pp. 36, 37.

[5] *De legationibus libri tres* (1585).

[6] *De legato et absoluto principe perduellionis reo* (1587).

held that respect is due to ambassadors so long as they respect the laws of the sovereign to whom they are accredited.

Zouche, following Grotius, maintains that the privileges of ambassadors rest on the consent of nations, that is, on the *jus gentium voluntarium*. He distinguishes between the various kinds of ambassadors—*e.g.* religious, permanent, extraordinary. Strictly speaking, an ambassador is a representative sent only by a supreme Power, and not by a colony, or province, or municipality. He may take with him his suite (*familia*)—wife, children, servants; and also auxiliaries (*comites*). His letter of credit is the manifest of his authority. His sovereign's mandate is sometimes open (*apertum*), sometimes secret (*arcanum*). Certain honours due to him in receptions and audiences, and other rules of courtesy, are considered in detail.[1] A few questions are raised, but not answered: *e.g.* How far is an ambassador bound by his instructions? Does he bind his sovereign if he acts contrary to his mandate, and if so, to what extent? Is he entitled to intervene in private affairs concerning his countrymen? Is he to be respected by others besides the sovereign to whom he is sent, *e.g.* by princes whose territories he traverses? Does security extend to an exile sent as ambassador to his own country by a foreign prince? As for the last question, Gentilis had decided in the negative, Sir Edward Coke in the affirmative.[2]

In case of offences against an ambassador, it is pointed out that they are offences against the State to which he is sent, as well as against the State sending him.

As to civil actions, Zouche follows Grotius in opposition to Gentilis, in denying liability of the ambassador and suite to the local jurisdiction, but in any case his house may not be made a place of refuge for malefactors, as was also the opinion of Paschalius. In the case of criminal offences, if they are not serious they may be overlooked, but if grave, he admits, with Grotius, that the offending ambassador must be conducted back to his sovereign with a demand for his punishment or surrender.[3] To prevent imminent danger he may be arrested and examined. Should he, however, be guilty of armed violence, he may lawfully be put to death, not under pretext of trying or judging him, but as a legitimate self-defence, "per modum naturalis defensionis, non per modum pœnæ."

In Zouche's special work on the whole subject, his *Solutio quæstionis*, published in 1657 after the famous case of Don Pantaleon Sa (1653), he considers the conflicting arguments and examples, ancient and modern, for and against the exemption of ambassadors and their suites. He justifies the condemnation of Don Pantaleon Sa[4] on the ground that, being in the suite of

[1] Part I. s. 4.

[2] *Ibid.*

[3] ". . . Eum remittendum ad principem qui eum misit cum postulato ut eum puniat aut dedat" (*Solutio quæstionis*, c. i.).

[4] Cf. *Journal of Comparative Legislation, loc. cit.*, p. 37.

his brother, the Portuguese ambassador, he was not exempt from the English jurisdiction.[1] He refers to Henry IV., King of France, who imprisoned the Spanish ambassador's secretary for attempting to corrupt a servant of the King, and, the ambassador complaining, the King replied, "Where have you learnt that ambassadors and their servants are at liberty to plot against the State and dignity of the prince with whom they reside?"[2] Finally, four reasons are stated why members of the suite are not independent of the local tribunals:[3] (1) they are more of the nature of the appurtenances of the ambassador ("comites vero facti sunt accessorie tantum"), and do not possess the same qualifications; (2) letters of credit are not given to them; (3) the ambassador alone is the representative of his prince, and this fact is the main basis of immunity ("legatus solus personam principis sustinet, quod est præcipuum immunitatis fundamentum"); and lastly (4) more credit and confidence are given to ambassadors by the sovereigns to whom they are accredited ("quod plus legatis quam comitibus eorum ab eo quo admittit credi oporteat") because they are generally men of approved reputation, few in number, and easy to be watched and prevented in any mischievous design.

A few matters remain to be mentioned under the head of peace. The contractual transactions of a sovereign carry with them the same rights and obligations as they would in the case of a private citizen. Agreements made by a sovereign without any stipulation as to duration—for example, for the delivery of towns or other places, and sums of money—descend to his successors, when they have been concluded under considerations of public utility.[4] More solemn engagements, such as formal treaties, define clearly certain reciprocal rights and obligations, and have as an additional sanction the oath of fidelity, the *suprema religio*.[5]

May we conclude treaties with people of a different religion?[6] This question points to the fact that, though the *De jure inter gentes* had been published two years after the Peace of Westphalia, it must have been written some time before; otherwise he would surely have taken cognisance of its new provisions indicating greater breadth of view and toleration. In the consideration of various other matters, it appears that Zouche does not

[1] Leibnitz condemned the conduct of Cromwell in this case as an infraction of the law of nations (*De jure suprematus ac legationis principum Germaniæ*, c. vi.).

Similarly, Bynkershoek stated (*De foro legatorum*, 1721, c. xviii.) that he had found very few cases of such punishment, and that such rare exceptions ought not to be held as invalidating the general rule of immunity. (Cf. *Journal of Comparative Legislation*, *loc. cit.*, pp. 36 *et seq.*)

[2] "Ubinam gentium didicistis legatos et eorum ministros potestatem habere machinandi contra Statum et dignitatem principis apud quem legationem obeunt?" (*Solutio quæstionis*).

[3] *Ibid.* c. xiv.

[4] Part I. s. 4, and Part II. s. 4.

[5] Part I. s. 4.

[6] "An fœdus inire liceat cum iis qui alieni sunt a religione?" (Part II. s. 4). [By *religio* he means the Christian religion.]

hesitate to declare that where the undertakings or promises of a sovereign conflict with public policy or national interest of vital importance, the latter should predominate. For example: Is a sovereign who has promised help to another State bound to furnish it should there be afterwards serious difficulties in his way?[1] Zouche adopts a stringent interpretation of the clause *rebus sic stantibus*. In 1585, Queen Elizabeth had promised the United Provinces men and money, but new circumstances having arisen, she referred the matter to certain jurists, who declared that every convention must be understood *rebus sic stantibus*, and that hence she was relieved of her engagement. May we revoke privileges of commerce granted in an agreement with foreigners?[2] Zouche does not admit that privileges may be so far exercised by foreigners as to inflict injury on our own subjects, and that therefore in such a case they may be revoked; in support of which opinion he recalls a certain negotiation between Elizabeth and the Hanseatic towns. A solemn oath exacted through fear may not on that account be repudiated, though it may be otherwise in the case of an informal promise; but an oath taken under a mistaken notion of material and relevant facts, or through fraudulent representations, cannot be considered as binding.[3] If one of the parties to a treaty violates a single condition, then the other contracting party may repudiate the whole.[4]

(*b*) **International Law in Time of War. Writings before Zouche.**—The chapters of Zouche's treatise which are devoted to war, like those dealing with peace, are more thorough and comprehensive, more systematic and authoritative than any of the contributions by his English predecessors. The publication, indeed, of Gentilis' *De iure belli* (1589) marks an important date in the history of international law,[5] and Zouche alone of all the writers in England for a century subsequent to Gentilis recognised fully the importance of this work, and took an account of its doctrines, many of which are accepted by him unhesitatingly. Soon after the *De jure belli* there appeared in England several works—translations, adaptations, or more or less original contributions: *e.g.* Eliot's *Discourse of War and Single Combat;* and *Instructions for the Warres*, a translation from the French. Much more considerable than these is the original work, published in 1593 by Matthew Sutcliffe: *The Practice, Proceedings and Lawes of Armes*, the indebtedness of which to Gentilis is apparent. He deals with the various causes of war, ridicules the idea of war being illegitimate when there is a just cause (in opposition to earlier objections on the ground of its being contrary to religion), insists on

[1] "An princeps qui promisit auxilia cum commode non possit, præstare teneatur?' (*Ibid.*).

[2] "An commercii sive negotiationis privilegia, de quibus cum exteris convenit, revocare liceat?" (*Ibid.*).

[3] "Si certum est eum qui juravit aliquod factum supposuisse quod revera ita se non habeat ac nisi id credidisset, non fuisse juraturum, non obligabit juramentum" (*Ibid.*).

[4] "Si pars altera in fœdere fefellerit, potest altera discedere" (Part II. s. 5).

[5] Cf. E. Nys, *op. cit.*

the right of sovereigns to prevent the large increase of forces by their neighbours, denounces the Spanish encroachments, points approvingly to the action of Louis XI., Lorenzo de' Medici preserving the balance of Italian States, and Elizabeth's policy with regard to the Low Countries, holds that declaration of war is not necessary when one is attacked (as in the case of the war with Phillip II.), and emphasises that in the sacking of towns mercy must be shown to women, children, the old and feeble. Questions relating to prisoners and prizes are also considered. The aim and nature of war are thus summarised: "Those warres are just and lawful which are made by the souveraigne magistrate, for lawful and just causes, being both orderly denounced in cases requisite and moderately prosecuted, to the end that justice may be done and an assured peace obteined." Some ten years later William Fulbecke issued *The Pandectes of the Law of Nations* . . . (1602), of which the seventh chapter treats of war, based on the authority of Gentilis and Ayala. A solemn declaration is demanded, and prisoners are not to be put to death. Similarly, Richard Bernard, writing in 1629, urges moderation and mercy, and affirms the legitimacy of war, allows right of conquest and right of booty, and like Gentilis and Sutcliffe, admits the right of intervention with a view to self-preservation.

Zouche on the Law of Nations in time of War.—Though Zouche exhibits a greater grasp and breadth of treatment, his kinship to these earlier writers is obvious. He defines war as a struggle undertaken by the sovereign power for a just cause.[1] As a rule a formal declaration is necessary. Under such circumstances it would be *bellum solenne*, in contradistinction to *bellum minus solenne*—private war, as family against family, admitted by the ancients,[2] or as in the case of reprisals. Measures of reprisal are not permissible in private law, as it is contrary to natural equity to inflict an injury on one person on account of the liability of another. But it is otherwise in the law of nations; in which case each individual is considered as forming a constituent part of the State, and therefore liable for its default.[3]

It is the duty of States to try by every means to obtain satisfaction before resorting to warlike measures.

Declaration, however, may be legitimately dispensed with in certain cases: (1) when a war is begun for purposes of necessary self-defence; (2) against those who are already considered as enemies (*hostes*); (3) against

[1] ". . . Justa contentio quæ scilicet authoritate legitima et ex iusta causa movetur (Part I. s. 6). Cf. the statement of Suarez.

[2] *ἀνδρολη̃ψία*, literally "seizure of men" (*λαμβάνω*, *λήψομαι*): an Athenian law, which, in case a citizen's murder abroad remained unpunished, authorised the seizure of three citizens of the offending State. (Cf. *Lex ap. Dem.* 647, 24 *seq.*: 1232, 4).

[3] "Jure tamen gentium introductum apparet, ut pro eo quod præstare debet civilis societas, aut ejus caput, sive per se primo sive quod alieno debito jus non reddendo, se obstrinxerint, obligata sint bona omnium subditorum" (Part II. s. 6).

rebels or traitors to whom the law of nations does not apply; and (4) when ambassadors are sent to demand satisfaction, and do not obtain it.[1]

He examines the different kinds of military power in war, and distinguishes classes of enemies: "Status inter eos quibuscum bellum est, est conditio inter ipsos quæ ad imperium militare refertur, quod est dominationis, præpotentiæ, et patrocinii militaris, vel conditio cum aliis ex qua alii inimici, alii hostes habentur."[2] Thus, military power is of three kinds: *dominatio*, acquired by force of arms; *præpotentia*, authority of conqueror over the conquered; *patrocinium*, military rights of the sovereign as to vassals. As to enemies, they may be *inimici*, *adversarii*, *hostes*, *e.g.* brigands, rebels, traitors, pirates ("quos offendere et perdere omnino licet"), and *iusti hostes* ("quibus omnia belli jura debentur"). A few relative questions are next raised:[3] Can we consider as enemies those who violate natural law, or the law of nations, those of another religion [meaning probably those not of the Christian religion], subjects of a friendly State living in enemy territory? Is an enemy subject living in neutral territory to be considered enemy or neutral? Zouche gives many conflicting examples and opinions, but his own conclusion does not clearly appear.

Property may be acquired in two ways: *acquisitio particularis*, by individuals; *acquisitio universalis*, by the State, when territories are invaded or surrendered. Are those things which are taken by the enemy and carried off to neutral territory to be restored to the original owners? He inclines to the affirmative, and mentions a case in support: thus, when Spanish ships were captured by the Dutch and carried to an English port, the Court of Admiralty ordered their restitution. Does a thing taken from the enemy become the property of the captors before it is carried by them to a safe place? Can a thing be considered as captured when it can no longer escape from its pursuers? Zouche defines *postliminium* in the terms of Paulus: ". . . Jus amissæ rei recipiendæ ab extraneo et in statum pristinum restituendæ . . . ," and the different rules laid down are taken substantially from the Roman jurisprudence. May we plunder the property of those whose forts and fields are occupied by the enemy? Yes, in the case of property previously belonging to the enemies themselves, or afterwards lawfully acquired by them.[4]

A large number of questions are suggested relating to military discipline and to the organisation of military justice. Many of these matters had

[1] ". . . (1) Cum suscipitur bellum ex causa necessariæ defensionis, (2) cum his bellum infertur, qui jam hostes habentur, (3) cum contra rebelles et defectores arma sumuntur, quia cum illis jus gentium non observatur . . . (4) . . . cum legatis res repetentibus eæ nec redditæ sunt, nec sit aliter satisfactum" (Part II. s. 10).

M. Scelle observes somewhat sarcastically on this statement and in reference to British practice: "On sait que les jurisconsultes anglais ont toujours admis que parfois la déclaration peut être omise, et que la pratique anglaise en a souvent sur ce point pris à son aise avec le droit des gens" (*Op. cit.* p. 313).

[2] Part I. s. 7. [3] Part II. s. 7. [4] Part II. s. 8.

been more or less regulated in England from early times, rules for each war having been drawn up by the king or by the commander-in-chief. Thus, regulations and ordinances were issued by John, Richard I., Richard II., Henry V. (the latter of whom ordered the protection of women and children, priests and sacred objects, and men at the plough); further regulations were made by Henry VII., Henry VIII., and Elizabeth; and in the Civil War rules were drawn up for the Royal forces by the Duke of Northumberland (1640), and the *Laws and Ordinances of War* (1643), by Essex, for the Parliamentary forces. Zouche, following this tradition, discusses divers matters arising in the conduct of warfare, and various reciprocal obligations of the belligerents. He deals with the *congressus militaris*, when sovereigns or commanders come to a conference or single combat; military envoys; ambassadors extraordinary to negotiate truces and conditions of peace. Military arrangements between the respective heads relate to (1) free access (*de commeatu*), (2) truces (*de induciis*), (3) exchange and ransom of prisoners (*de captivis permutandis et redimendis*), (4) surrender of places (*de conditionibus iis qui loca obsessa dedunt*). Military treaties are concluded by the sovereign power when armistices and final peace are concerned. Do treaties of peace concluded by generals bind the sovereign or State? Zouche refers to the insistence of the Roman Senate as to the necessity of its sanction. But when the sovereign power has had cognisance of such treaty and has acquiesced, ratification is to be presumed where such circumstances exist as imply concurrence with the conditions; though mere silence in itself does not warrant this inference.[1] If an engagement entered into by a general is repudiated by the sovereign, ought the other party to be restored to its *status quo ante*?

Then follow some questions relating to hostages: Can they be restored after the death of the one for whom they had been given? Can fugitive hostages be received by those who had given them?[2] To the latter question Gentilis and Grotius gave a negative reply which, Zouche points out, is in conformity with the contention of Edward III. of England. May we put to death hostages for an offence of the one who has given them? Gentilis says yes, Grotius no, but Zouche does not decide. Does the *lex talionis* exist between enemies? Gentilis seems to defend it, and Grotius is against it. To kill prisoners taken by us when we have no means of securely maintaining them in our power is condemned by Gentilis. Illegitimate practices are pointed out—though rather suggested in the form of questions—*e.g.*, treatment of prisoners, women and children, women who take up arms, profanation of sacred places, use of guile, lying, or ambush

[1] Part II. s. 9.

[2] "Gentilis vero et Grotius ambo concludunt civitatem quæ dedit obsidem recipere et retinere non debere, non magis quam recipere rem datam pignori citra furti crimen; et proinde Edvardus tertius Rex Angliæ uste accusabat quod contra jus obsidem fugientem recepisset" (Part II. s. 9).

in military conferences, poison, assassination, refusal of burial to enemies, ill-treatment of envoys and of those who surrender, and various other practices of a like nature.

Maritime Law and Naval War.—English writings on maritime law before Zouche are not of great consequence. The rules of the *Consolato del Mare*, embodying customs many of which date from very early times, for a long time regulated the law as to prizes in England, as in many other States. Edward III., Richard II., and Henry VII. largely prohibited the importation of goods except on English vessels; Elizabeth excluded foreign boats from the fisheries in the adjacent seas, and also from the coasting-trade. In the sixteenth century England energetically opposed the rule "robe d'ennemi confisque celle d'ami," which France claimed to have established. In the middle of the next century, important legislative measures were passed—*e.g.* the Long Parliament prohibited (1650) foreign vessels from trading with the American colonies, except by special licence; and in the following year Cromwell passed the *Act of Navigation*.

William Welwood's *Abridgement of all Sea-lawes* (1613) touches on the jurisdiction of the judges of the High Court of Admiralty, and on the controversy as to fishing. He maintains that there is not necessarily a universal liberty to fish in any sea whatever, and protests against Grotius' confusing liberty of navigation with liberty of fishing. Gentilis, in his *Advocatio Hispanica* (1613), deals with the various disputes which had arisen between England and Spain and other Powers, and considers certain matters relating to contraband, prizes, and pirates.

The little that Zouche has to say on the law of naval war is concerned with the requisition of foreign vessels, maritime captures, and right of visit. He maintains that requisition for war of foreign vessels touching our ports may be quite legitimate.[1] Is it permissible to confiscate neutral property on an enemy vessel? In the time of Zouche the prevailing maxim was that if the vessel could be legally confiscated, then its cargo could also be seized.[2] In the opinion of Grotius this is only a presumption as to the enemy character of the cargo, and could be rebutted by evidence to the contrary. With regard to enemy goods on a neutral vessel, Zouche states that the English Court of Admiralty had decided that they may be lawfully captured. Right of visit is regarded by him from the point of view of a maritime ceremonial, which depends on the mutual agreement or comity of nations. A merchant-vessel which fails to salute a foreign man-of-war cannot merely on that account be taken as a lawful prize. A vessel is considered captured if it is brought to the captor's port, or to a station where his fleet lies, *intra præsidia*, in such a way that possibility of recapture is minimised;[3] but to make the rule more

[1] Part II. s. 5.

[2] ". . . Si navis sit obnoxia, bona etiam obnoxia haberi" (Part II. s. 8).

[3] "Placuit vero gentibus ut rem cepisse is intelligatur quia ita detinet ut recuperandi

precise, safe detention during twenty-four hours, as Grotius stated, was recognised by European nations as the criterion.[1]

Neutrality, Contraband, etc.—Little is said by Zouche about the rights and duties of neutrals and the correlative rights and obligations of belligerents. He uses the terms *amicus* and *amicitia* instead of the more expressive *neutral* and *neutrality*, which had already been used before him, though by no means generally.[2] Is it permissible to pursue an enemy on neutral territory? He inclines to the opinion that an enemy, by the law of nations, may be pursued everywhere.[3] May we carry over neutral territory a prisoner captured on enemy territory? His opinion appears to be in the negative, provided he has not yet been carried *intra præsidia*.[4] He recalls an instance in the war between Geneva and Milan; the latter caused prisoners to pass over the territory of Bologna; and John of Immola, a celebrated jurist, having been consulted by the pontifical legate, decided that it was an infraction of the law of nations.

The subject of contraband[5] has been one of the most disputed questions in the whole range of international law, from the earliest to the most recent times. In the time of Zouche, usage and practice were changeable and capricious, and adopted by each State as it thought fit and convenient in view of its own interests. It was only after his time that a distinct international effort was made—*e.g.* in the Treaty of the Pyrenees (1659) and in the Treaty of Utrecht (1713), to indicate more clearly the nature of contraband goods, and to enumerate certain specific articles. Zouche fellows Grotius' view that only such things ought to be considered contraband as directly serve for war, or can be so utilised—*e.g.* arms, money, provisions. He admits that this is a logical inference from the fact that the institution of contraband is a penal measure. But he goes further than Grotius and Bynkershoek in regarding also as contraband, in certain cases, those things of which admittedly contraband goods can be made, *e.g.* iron (for arms), wood (for ships), etc. In this respect, he takes into account the nature of the surrounding circumstances in each particular case, and urgent national necessity.[6] Sometimes, indeed, the more stringent measures will be necessary to prevent fraud. He is no doubt guided in

spem probabilem alter amiserit; ut, cum res mobiles intra fines, id est, intra præsidia perductæ fuerint" (Part II. s. 8).

[1] "Sed recentiori iure gentium inter Europæos, inquit Grotius, introductum videtur, ut talia capta censeantur, ubi per horas viginti quatuor in potestate hostium fuerint" (*Ibid.*).

[2] Cf. *Journal of Comparative Legislation, loc. cit.* pp. 42 *seq.*

[3] "Hostis qui est ubique secundum jus gentium impeti potest" (Part II. s. 9).

[4] ". . . Alibi captus, nondum intra præsidia deductus, in alieno territorio detineri, vel coerceri non debet" (Part II. s. 9).

[5] Cf. *Journal of Comparative Legislation, loc. cit.* pp. 44 *seq.*

[6] "Ubi est eadem ratio prohibitionis, materiæ et speciei, item ius in utraque censendum est" (Part II. s. 8).

this attitude by the provisions of the Roman law, *e.g.* the *senatus consultum Macedonianum*, which prohibited not only loans of money to a minor, but also those things for which money could be procured, "cum contractus fraudem sapit."

Again, are accessories of prohibited articles, *e.g.* sheaths for swords, to be themselves prohibited? Many ancient examples are cited, but no opinion is expressed. Similarly, no solution is given to the further problems suggested: May we intercept those things returning from the enemy, as well as those going to him? Is tobacco to be considered as contraband [on the supposition that it may be used for preserving provisions!]? Finally, what is the position in the case of a mixture of contraband goods and lawful goods found on a vessel? Zouche insists, and quotes an ancient author [1] in support, that it is essential to discriminate between the case where both kinds of goods belong to the same owner, and the case where they belong to different owners. In the event of the former, both may be lawfully confiscated,—at least if the owner was aware of the fraudulent shipment. There is no reference in Zouche's work to English contemporary practice, but it appears that the earlier custom of the Admiralty Courts was to condemn both ship and cargo irrespective of ownership; afterwards the rule was relaxed, so that confiscation applied to the vessel and the innocent portion of the cargo only when they were the property of the owners of the contraband, or where there was fraudulent conduct.[2]

Value of Zouche's Work.—The substance of Zouche's work on international law has now been considered, his doctrines have been briefly set forth, and his relationship to his predecessors and contemporaries has been indicated. His wide learning, and great ability—judicial as well as literary—were recognised in his own time; and his opinions, both in his lifetime and after his death, were regarded as possessing high authority. His versatility was remarkable. As M. Rivier [3] remarks: "Er war berühmt als scharfer, gelehrter, vielseitiger Jurist, 'living Pandect of the Law,' Civilist, Canonist, Feudist, Publicist, auch als Dichter; vorzüglich bedeutend ist er aber als einer von den Begründern der Wissenschaft des Völkerrechts." His fame spread on the Continent, several editions of his work were reprinted, and translations were made.[4]

[1] Petrinus Bellus, *De re militari.*

[2] Cf. Robinson's *Admiralty Reports*, vol. iii. p. 221, note (a), (cited by Wheaton *History of the Law of Nations*, p. 134).

[3] In F. von Holtzendorff: *Handbuch des Völkerrechts* (Berlin, 1885), vol. i. p. 417.

[4] His *De jure inter gentes*, Oxford, 1650; Leyden, 1651; The Hague, 1659; Mayence, 1661; last Latin edition, 1759.

A German translation, or rather adaptation in which Zouche's name is not mentioned, was published by Gottfried Vogel, Frankfort, 1666, under the title of *Allgemeines Völkerrecht, wie auch allgemeines Urtheil und Ansprüche aller Völker.*

His other important work, dealing with the legal position of ambassadors, and forming a supplement to and expansion of his treatment of the same subject in the earlier work

Varying estimates of his work, however, have been made in more modern times. Wheaton,[1] for example, regards the *De jure inter gentes* as a mere abridgment of Grotius, with illustrations for the most part drawn from Roman law and Roman history, and asserts that its title to fame rests merely on the happy terminological innovation—"jus inter gentes." On the other hand, M. Rivier, as above, terms him one of the founders of the science of international law; Kaltenborn[2] speaks of his principal book as the first real treatise on international law; Ompteda[3] uses similar expressions, and holds that Zouche occupies an important place in the history of the law of nations. The true estimate is nearer to the latter than to that of Wheaton, who cannot, surely, have read the work he so unjustifiably disparages.

It is true that Zouche is more of a systematiser of doctrines than an innovator; but then the same remark largely applies to such a great writer as Grotius. Indeed, it would have been impossible then to be otherwise, considering the epoch in which he wrote, the nature of contemporary events, the unsettled relationship between States, the clash of international politics, the conflict of religions—in a word, the rapidly changing character of the age. To write abstract, theoretically complete, and, as it were, final treatises—seemingly adapted more for a Utopia than for an imperfect world—is to do much towards instigating nations to discredit the whole fabric of international law; and Zouche was far too wise to attempt such a task.

The more certain subject-matter of the law of nations he arranged consistently and logically, and set forth in a style marked by precision and conciseness. The more doubtful matter he incorporated in its proper place, but in the form of questions, many of which he leaves unsolved, and many, if not receiving a categorical answer, are impliedly answered—even then only tentatively—by means of examples and analogies. He does not attempt profound analysis, and carefully avoids metaphysical disquisitions; he is content to be guided by practical common sense and the necessity of time and place.

is the *Solutio quæstionis* . . . , first published at Oxford, 1657; Cologne, 1662; Berlin 1669 (with notes by Hennelius).

A German translation was issued at Jena, 1717, by J. J. Lehmann, under the title of *Eines vornehmen englischen Jureconsulti Gedanken von dem Traktement eines Ministers*; an English translation by D. J., London, 1717; and another in the same year by an unknown translator, giving the Latin text also.

(The latter three translations were published in connection with the affair of Gyllenburg, the Swedish ambassador.)

[1] *Op. cit.*, p. 101.

[2] *Kritik des Völkerrechts* (1847): "Das erste eigentliche Lehrbuch des Völkerrechts."

[3] "Dieses ist als das erste Lehrbuch des gesammten Völkerrechts anzusehen, und verdienet daher vorzügliche Aufmerksamkeit. . . . Solchemnach kann man sagen dass Zouchäus der erste ist, der das Völkerrecht in seinem ganzen theoretischen sowohl als practischen Umfange erkannt und abgezeichnet hat, und daher in dieser Wissenschaft eine wichtige Stelle einnimmt" (*Litteratur des Völkerrechts*, Regensburg, 1785, pp. 252, 253).

His manner is characterised by modesty and reserve, being a marked contrast to the vigorous self-assertiveness and dogmatic insistence of Bynkershoek. The work of Zouche is of comparatively modest compass; it does not perhaps occupy as high a position in the evolution of international law as the treatise of Grotius; but the English writer made a distinct advance on his predecessor in many respects—*e.g.* the use of the expressive "jus inter gentes," and its underlying conception, the recognition of the supremacy of conventional law over "natural," the use of recent examples of custom and practice, the constant implication of the relativity of legal development to political evolution. Zouche is the greatest of the earlier English school of international jurists and publicists; and the subsequent traditions of this school of writers—not to mention many Continental writers of the positive school—owe much to his influence and example.

ROMAN-DUTCH LAW IN THE LAW REPORTS.

Professor R. W. Lee delivered an introductory lecture on "The Roman-Dutch Law in the Law Reports," in the lecture theatre at University College, London, on October 8.

The Hon. Sir Richard Solomon, Agent-General for the Transvaal, who presided, said that the South African colonies which admitted the Roman-Dutch law system as their own would, he hoped, at no distant date, be unified or federated into one great South African Commonwealth, and whatever form that union took, he was confident of this—that the Roman-Dutch law would always remain the common law of South Africa. He considered, therefore, that at our great seats of learning some provision should be made for the teaching of that portion of the law which was the common law of an important portion of the British Empire. South Africa had its own university, which prepared men for call to the Bar and for practice as solicitors, but still there was an ever-increasing number of men coming from South Africa to prosecute their legal studies at the English Universities. Marriages between English families and South African families were frequent, and the incidents and legal consequences of marriage were determined by the domicil of the husband, and in most of those marriages that domicil was South Africa. The great banking institutions and a number of commercial houses had their head offices here; the carrying trade between Great Britain and South Africa was in the hands of companies domiciled in this country, and the great gold industry of the Transvaal was controlled from London. It followed, therefore, that there were transactions every day in which the people of this country were enormously interested—transactions giving rise to obligations and rights which must be determined by the law of South Africa, and on which lawyers in this country were consulted. He submitted that, in order to advise upon these transactions, a knowledge of the principles of Roman-Dutch law, which applied to such matters as marriage and its legal consequences, the intestate succession to property, the construction of wills, the rights of legatees, *fidei commissum*, usufruct, and the transfer and hypothecation of real property, should be thoroughly understood by lawyers in this country.

Professor Lee then delivered his Lecture, which was as follows:—

Oceanus Juris.—If the student or teacher of English law, if the busy practitioner, ever finds time to divert his thoughts from the tiresome necessity

of being examined and examining, or from the absorbing consideration how best to impress his personality on a solicitor or to strike the strings of emotion in the hearts of a common jury, he may well be aghast to contemplate the enormity of the material with which he aspires to be or is deemed to be conversant. There is the whole statute law for his study—not too easy a thing to handle, in spite of revising and consolidating Acts. There is the endless flood of reported cases, still swollen from day to day by the inexorable volubility of judicial legislation. There are text-books, in which gifted authors set themselves to rationalise the irrational or to reconcile the irreconcileable, making light shine in a darkness which knows it not. Lastly, there is the small class of books of authority—a department of our law which counts for very little in an age when a lawyer may well live his life through without taking Coke's *Institutes* off the shelf, and even Blackstone—"Inclytum quondam nomen, nunc tantum auditur," "Truly the law is a thing without depth to those that plunge into it." But enormous as all this material is, and hard as it is to find a way through such a labyrinth, I cannot say that one who professes allegiance to the Roman-Dutch law is more happily situated. Suppose an ambitious young man in one of the Roman-Dutch Colonies (for so for convenience we may describe those dependencies of the Crown in which this system prevails)—suppose a young student in the Colony of the Cape of Good Hope, for instance—anxious, not merely to acquire a tradesman's knowledge of the practice of the Courts, but to become learned in the law by which he is to earn his bread, what, let us ask, are the statutes, what are the books of decided cases, what the books of authority in which he will find that law enshrined?

Statutes.—For statutes he has, first of all, the enactments of the Colony to which he belongs—not very bulky perhaps, and easily mastered. But he will not be content with these. He must know something (and the more the better) of the statute law of the neighbouring Colonies. Then, besides the law of his own and the adjoining Colonies, he must know the statute law of England, not merely so far as this comprises Acts relating to the Colonies in general, or to his own Colony in particular, nor again merely in relation to those branches of English law which have been introduced in their entirety by Acts of the local legislature, but also wherever a colonial statute is passed upon an English model, he must know the English prototype, for the Privy Council has laid it down that in the construction of a statute a colonial judiciary is to be guided by the decisions of the English Courts of appellate jurisdiction (see *Trimble* v. *Hill*, 5 App. Cas. 342). Indeed it is hard to set any limit to the knowledge of Imperial legislation which may be necessary or useful to the colonial practitioner. So much for the English statute law. But it is not from England that the Roman-Dutch law derives itself. The enormous folios of the *Groot Placaat Boek*, containing the enactments of the States-General and of the States of Holland

and West Friesland, may at any time require attention. Many of the most important institutions of the law depend upon Placaats of Charles V. or upon Ordinances of the States of the United Provinces. In addition to all this, to assert (as some have done) the continuing authority of pre-British colonial legislation and of the so-called Statutes of India is indeed to evoke spirits from the grave to harass the nerves of the living.

Text-Books.—What next of authoritative text-books? In the Roman-Dutch system these play as great a part as any other portion of the law. The famous work of Johannes Voet on the Pandects has been described as the Bible of the Roman-Dutch lawyer. It is constantly consulted constantly cited. Add to his the names of Simon van Leeuwen, Hugo de Groot, Bynkershoek, Vanderlinden, and a host of other writers in Latin or Dutch, whose works must be referred to upon points of law arising in practice. But this literature, considerable as it is, is but the beginning. Almost every text of Voet and Van Leeuwen rests upon the authority of some passage or passages in the Corpus Juris—every word of which is presumptively law wherever the Roman-Dutch law prevails. After the reference to the written law follow in these authors citations of numerous jurists who have devoted their lives to its elucidation, men of every age and of every country in which the Civil Law has existed or been received—Carpzovius the Saxon, Farinacius the Italian, Gothofredus the Frenchman Fachinæus the Bavarian, Heineccius the Prussian, Gomez the Spaniard, and how many others! All these are in their measure authoritative. Any one of them may be properly cited in a Court which administers the Roman-Dutch law.

Decisions of the Courts.—What, lastly, of decided cases? A practitioner at the Cape must know his own case law and the case law of the neighbouring Colonies. The decisions of the Courts of the United Provinces are still cited from the works of Neostadius, Coren, and the rest of them. American cases (as in this country) may be cited to illustrate or adorn an argument. A knowledge of Scots law will not come amiss. Lastly, the case law of England—much, at any rate, of it—must be as familiar to him as to a lawyer whose concern is with the forum of the mother country. To the same class may be referred the numerous volumes of Sententiæ, Consultatien, Advyzen, and the like, which resemble the *responsa prudentum* of the Romans in being opinions of jurists and not decisions of the Courts, and which, though, unlike the *responsa prudentum* of the Romans, un authoritative, may yet be appropriately cited in argument as evidence of a rule of law.[1]

Other Sources.—I have mentioned in outline some of the sources to which the Roman-Dutch lawyer may have to turn for knowledge of the law which binds him. Let him add to these a study of the works of the French civilians, notably Domat and Pothier, let him add some know-

[1] Wessels, *History of the Roman-Dutch Law*, p. 241.

ledge of the Canon Law, let him add a thorough acquaintance with the application of the principles of the Civil Law in the Codes of modern Europe, and in French Canada, Malta, and Mauritius, let him add the law of Ceylon and British Guiana, and he will know as much as a Professor of Roman-Dutch Law might wish to know, and no one item in this encyclopædic knowledge will be too remote from or foreign to his theme. To release you from further apprehension let me say at once that I am to deal to-night with only one small part of this vast subject. I am to introduce you to the decisions of the Judicial Committee of the Privy Council in causes which have come in appeal from one or other of the Roman-Dutch Colonies. My design is to indicate the principles by which this august body is governed, to illustrate the part it has played in directing and shaping the development of the modern Roman-Dutch law. Incidentally I shall refer to some few characteristics of that system such as may interest an audience not exclusively legal. Lastly, I shall mention briefly some decisions of constitutional interest for which we are indebted to the Roman-Dutch Colonies.

The Judicial Committee.—The Judicial Committee of the Privy Council, I need scarcely remind you, is the ultimate Court of Appeal from India and the Colonies, as well as from the Channel Islands and the Isle of Man. Created by an Act of William IV., it depends, now, upon that and numerous subsequent statutes. Briefly, it may be said to consist of the learned lords who constitute the House of Lords in its judicial character as a Court of ultimate resort for England, Scotland, and Ireland, afforced by some other members who have been, or are, associated with India and the Colonies. Its procedure is in some respects peculiar to itself, and retains the marks of its origin as part of the King's Privy Council or Counsell Board—a body, says Coke, which "like good Centinels and Watchmen consult of and for the publique good and the honour, defence, safety and profit of the Realm." Being, strictly speaking, therefore, advisory in character, not judicial, it makes recommendations to His Majesty which receive effect by Order in Council. In accordance with ancient usage its recommendations are unanimous. There is no place for dissenting opinions. That this practice is regrettable in the interests of jurisprudence will not be denied by any one who has observed how the conflict of minds in judicial as in other matters often strikes an illuminating spark. Another feature of its practice which marks a distinction from the procedure of the House of Lords is that the Privy Council Board, it is said, does not consider itself necessarily concluded by its own previous determinations, while the opposite practice of the House of Lords may now be taken to be firmly established.[1] Each decision of the Privy Council is of supreme authority in the Colony or dependency from which the appeal in question is brought, and for other Colonies is practically authoritative in any case which lies in *pari materia*. The influence of the Privy Council

[1] Pollock, *First Book of Jurisprudence*, p. 317.

upon the legal development of a Colony extends, however, as I hope to show, far beyond the limits which the foregoing remarks would seem to indicate.

Reported Cases.—The number of reported cases taken in appeal from the Roman-Dutch Colonies (namely, Cape Colony, Natal, Bechuanaland Protectorate, Southern Rhodesia, the Transvaal, the Orange River Colony, Ceylon, and British Guiana) amounts to not more than 120 in all. They are to be found in Knapp, Moore, Moore New Series, and the Law Reports. Many of these concern matters of merely local interest or questions of construction, or are too much implicated in the facts of the individual case to admit of useful discussion. The residue may be roughly arranged in three classes. The first class raises directly questions of interest or controversy in the Roman-Dutch law. The second class illustrates the reception of the English law in the Roman-Dutch Colonies. A third group of cases, though only slightly or not at all connected with the Roman-Dutch law, contains determinations upon questions of constitutional law often of the highest interest or importance. I shall proceed to give specimens of cases referable to each of these three heads.

First Group: Cases dealing directly with Questions of Roman-Dutch Law.—To indicate the order of sequence rather than to attempt an exact classification, I subdivide this group into cases relating to (*a*) the law of persons; (*b*) the law of things; (*c*) the law of succession; (*d*) the law of actions. The law of obligations, contractual or delictual, is almost entirely unrepresented by any decisions of the Board.

(*a*) **Law of Persons.**—To this head modern codes, differing herein from the Roman law, refer the personal incapacities of insanity, sex, and minority.

Insanity.—The Roman-Dutch law in regard to the contracts of insane persons came up for consideration in the recent case of *Molyneux* v. *The Natal Land and Colonisation Co., Ltd.*, [1905] A.C. 555. The question, broadly stated, was whether one who had contracted with an insane person in good faith and without knowledge of his insanity could enforce the contract against him. In English law the answer would be Yes (*Imperial Loan Co.* v. *Stone*, [1892] 1 Q.B. 599). Was it the same in Roman-Dutch law or was the transaction wholly void? The Supreme Court of Natal, by a majority of two to one, held that the estate of the insane person was liable. Chief Justice Bale, in a judgment which is a monument of research and learning, maintained the opposite. On appeal to the Judicial Committee the view of the Chief Justice prevailed, the judgment of the Board being pronounced by Sir Henry de Villiers, who (as I need hardly remind you), besides being a member of the Judicial Committee, has been Chief Justice of Cape Colony since the year 1873. You will notice that this case exhibits a conflict for supremacy between the English and the Roman-Dutch law,

which the event determined in favour of the latter. It is of interest to observe the process by which the majority of the colonial Supreme Court arrived at an erroneous conclusion. "All our authorities," said Mr. Justice Beaumont, delivering the joint judgment of himself and Mr. Justice Finnemore, "agree in laying down the general rule of law that obligations entered into with a lunatic must *prima facie* be regarded as null and void because of his incapacity to give a valid consent. 'Furiosus nullum negotium gerere potest quia non intelligit quod agit.' But whilst this general rule or principle cannot be denied, our law and the works of the learned Roman and Dutch jurists and commentators deal lightly or not at all with the question whether such a contract is absolutely void under all or any circumstances, or whether it may in certain cases be held to be voidable only—whether, for instance, a want of knowledge by one of the parties of the insanity of the other party to a contract affects the validity of the contract. "When our law is silent," the learned judges concluded, "we have to fall back on the Roman law, and when that also is silent, we should be guided by the rulings of English judges on general principles so far as they are not in conflict with our law." Following the rule thus laid down the learned judges decided the case before them in accordance with the English, not the Roman-Dutch law. And so the English law "comes me cranking in" to fill the vacuum—a vacuum, however, as appeared from the sequel, not in the law, but in the minds of its administrators.

Sex.—I turn next to the disqualification of the female sex. The Roman law scarcely recognises any incapacity based upon what we call coverture. But women (because of the levity of their minds) enjoyed special privileges, or if you like to call them so, disqualifications. Notably, the laws called Senatus-Consultum Velleianum and Authentica si qua mulier prohibited a woman from binding herself as surety for another. The benefit of these laws may, however, be expressly renounced. The law in this regard was recognised by the Privy Council in the case of *Mackellar* v. *Bond*, 9 App. Cas. 715, in appeal from Natal. It may be observed, however, that by the Cape Bills of Exchange Act, 1893 (s. 20 sub-s. 1 and s. 88), the rule has been abolished as regards a woman's promissory notes and bills of exchange.

Presumption in Favour of Marriage.—It is a wholesome rule that the law presumes in favour of marriage. Where a man and woman have lived together as man and wife the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage. So held by the Privy Council in *Sastry Velaider Aronegary and his Wife* v. *Sembecutty Vaigalie*, 6 App. Cas. 364, in appeal from Ceylon. Their lordships based their decision on the law laid down by the House of Lords in *Piers* v. *Piers*, 2 H.L. Cas. 331, *de Thoren* v *Attorney-General*, 1 App. Cas. 686, and *Breadalbane's Case*, L.R. 2 H.L. Sc. 269. No Roman-Dutch law authorities were cited in their lordships' judgment.

(*b*) **Law of Things.**—Under this head I may refer to *The Divisional Council of the Cape Division* v. *de Villiers*, 2 App. Cas. 567, and to *Webb* v. *Giddy*, 3 App. Cas. 908 (which raise some interesting questions with regard to land tenure in South Africa), and to the recent case of the *Standard Bank of South Africa, Ltd.*, v. *Heydenrych*, [1907] A.C. 336 (relating to priorities between mortgagees). There are a few cases on leases. I may mention (without discussing) *London and South African Exploration Co.* v. *De Beers Consolidated Mines*, [1895] A.C. 451 (on the question of the removal of fixtures). Lord Macnaghten in delivering the judgment of the Board referred to the "very learned and elaborate opinion" of Chief Justice de Villiers in the Court below, and said "their lordships see no reason to think that the conclusions at which the Supreme Court arrived are in any respect erroneous." The difficult and controverted question how far a lease in the Roman-Dutch law creates a right *in rem* has not yet come up for discussion in the Privy Council. The law as to water rights is of great importance in Cape Colony. Cases relating to it are *Breda* v. *Silberbauer*, L.R. 3 P.C. 84, and *The Commissioners of French Hoek* v. *Hugo*, 10 App. Cas. 336. Suppose a fountain of water "erumpent" on my land. May I bottle it up and convert it to my own use or must I send it down its accustomed channel towards the sea? The case supposed is one in which no servitude exists in favour of a lower proprietor. In Cape Colony the view once prevailed that a landowner might deal with such a stream as freely as with any other part of his private property. This was first questioned by the Privy Council in *Breda* v. *Silberbauer* and is now admitted to be untenable.[1] The colonial Courts had, it seems, been misled by a misapprehended text of Voet.[2] The dry light of reason reflected in the opinion of the Privy Council guided them back to the right path.

(*c*) **Law of Succession.**—The Roman-Dutch law relating to testaments as well as that of intestate succession differs widely from the law of England. The civil law knew nothing of the office of executor. The credits and debts of a deceased person devolved upon his heirs by universal succession. Not until Justinian introduced the benefit of inventory could a testamentary heir who accepted a succession escape its attendant burdens. The Roman-Dutch law introduced executors, as distinct from heirs, to carry into effect the last will of testators (de Villiers C.J. in *Fischer* v. *Union Bank Liquidators*, 8 Cape Col. S.C. Rep. at p. 49). But the scope of their functions was strictly limited. "The executors of a testament," says Van der Kesse (Thesis 323), "since they are as it were procurators appointed by the testator to manage his funeral, to recover what is due to him, to pay his legacies and debts, and to administer his property until a division thereof can be effected, and since therefore they manage the affairs of the heirs also, cannot debar the heirs from the inheritance unless the testator has directed

[1] 2 Maasdorp, ch. xiii. [2] Voet, 8. 3. 6.

otherwise, nor alienate the property without their consent." The Privy Council adopted and commented upon this text in the case of *de Montfort* v. *Broers*, 13 App. Cas. 149, in appeal from the Cape, and in *Farnum* v. *Administrator-General of British Guiana*, 14 App. Cas. 651. But the conclusions to be drawn from it are not very far-reaching, since in South Africa, as also in Ceylon, the executor enjoys, under the modern law, the same wide powers of administration and alienation as belong to an executor in England.

Mutual or Joint Wills of husband and wife are of frequent occurrence in the Roman-Dutch Colonies. The effect of such instruments was fully considered by Sir Robert Collier in delivering the judgment of the Board in *Denyssen* v. *Mostert*, L.R. 4 P.C. 236. First, notwithstanding their form, they are to be read as separate wills—the disposition of each spouse being treated as applicable to his or her half of the joint property. Secondly, each is at liberty to revoke his or her part of the will during the co-testator's lifetime with or without communication with the co-testator, and also after the co-testator's death. But thirdly, the right which a surviving spouse has to revoke a mutual will as far as it affects his or her half of the property is taken away on the concurrence of two conditions: (*a*) that the will disposes of the joint property on the death of the survivor, or (as it is sometimes expressed) where the property is consolidated into one mass for the purpose of a joint disposition of it; (*b*) that the survivor has accepted some benefit under the will.[1]

Are Husband and Wife one Person or two?—The answer in the common law is given by Lord Coke (though his own experience might have suggested otherwise). "Husband and wife," he says, "are one," and that one, it has been said, is the husband. The Roman-Dutch law takes a different view. In *Dias* v. *Livera*, 5 App. Cas. 123, a case in which there was a joint gift to a husband and a wife and a third person, the Board refused to adopt the rule of the common law which would have given the spouses but a moiety between them. "It would not be incorrect," their lordships thought, "to state as a general proposition that whereas the English law assumes the husband and wife to be for most purposes one person, the Roman-Dutch law assumes them to be for most purposes two." In accordance with this principle the Supreme Court of the Cape of Good Hope has refused to accept *in toto* the rule of the English criminal law which (in very ill-defined circumstances) presumes a wife to have acted under the coercion of her husband.

(*d*) **Law of Actions.**—In *Douglas* v. *Sander & Co.*, [1902] A.C. 437, Lord Robertson doubted whether in the law of Natal the *actio doli* was limited (as in the Civil Law) to a case where no other action was available. At all events it was open to a plaintiff who by the fraud of which he complains has been deprived by defendant of his other remedies. The

[1] 1 Maasdorp, p. 135.

next case under this head relates to suing the Crown. In *Hettihewage Siman Appu* v. *The Queen's Advocate*, 9 App. Cas. 571, the Judicial Committee were satisfied that by the law of Ceylon suits might be instituted by private persons against the Queen's Advocate (representing the Crown) for the recovery amongst other things of debts and damages. Their lordships thought (to quote the headnote to the case) that "there is no authority for saying that the Roman-Dutch law of Holland (which was in force in Ceylon at the date of its conquest by the British) empowered the subject to sue the Government, but since the conquest a very extensive practice of suing the Crown has grown up which has been recognised by the Legislature." The judgment of the Board tacitly assumes that this practice does not extend to an action of tort. But if the question should come up for future decision it is possible that their lordships might take a different view, for Sir John Bonser, now a member of the Judicial Committee, in the case of *Sandford* v. *Waring*, 2 Ceylon New L.R. 361 (which came before him when Chief Justice of Ceylon), did not accept either their lordships' history or the distinction sought to be drawn between actions of contract and actions of tort.

Another case dealing with actions against the Crown is *Palmer* v. *Hutchinson*, 6 App. Cas. 619, in appeal from Natal. Here the action was held not to lie, and *Macbeath* v. *Haldimund*, 1 T.R. 180, and *Gidley* v. *Lord Palmerston*, 3 Bro. & B. 285, were followed. The distinction between this and the Ceylon case lies in the fact that in the latter the right of suit had been recognised by the Legislature, but in the Natal case "no practice of the (colonial) Court," said Sir Barnes Peacock (delivering the opinion of the Board), "can confer upon it any power or jurisdiction beyond that which is given it by the charter or law by which it is constituted."

Second Group: Cases illustrating the Reception of the English Law in the Roman-Dutch Colonies.—You will remember how in *Molyneux* v. *The Natal Land and Colonisation Company* the attempt to resort to the English law in a question of the law of insanity was defeated in the Judicial Committee, thanks, one is tempted to say, to the accidental presence of Sir Henry de Villiers at the Council Board. In the interesting case of *The Eastern and South African Telegraph Co., Ltd.*, v. *Cape Town Tramways Co., Ltd.*, [1902] A.C. 381, victory determined in favour of the other side. Electrical currents had escaped from the respondents' tramway system so as to cause disturbance to appellants' delicate telegraphic apparatus. Was it a case for the application of the rule in *Rylands* v. *Fletcher*, L.R. 3 H.L. 330, or of some Roman-Dutch equivalent? The question was a nice one, for electricity, be it what it may, is neither a wild beast nor a bad smell—nor yet a torrent of water, so as to give an opening to the action *de aqua pluvia arcenda*. The Supreme Court of Cape Colony accepted the contention of the respondents, that they were not guilty of the *culpa* which the Roman-Dutch

law required the plaintiffs to prove. They were accordingly absolved from the instance. The Privy Council upheld the decision but on a different ground. "The appellants," said Lord Robertson, "cannot create for themselves by reason of the peculiarity of their trade apparatus a higher right to limit the operations of their neighbours than belongs to ordinary owners of land who do not trade with telegraphic cables. The principle of *Rylands* v. *Fletcher*, which subjects to a high liability the owner who uses his property for purposes other than those which are natural, would become doubly penal if it implied a liability created and measured by the non-natural user of his neighbour's property."

But as regards the applicability of *Rylands* v. *Fletcher* to Roman-Dutch law, the Board had no doubt. Lord Robertson continued: "The learned judges of the Supreme Court have indicated considerable reluctance to accept the doctrine of that case, and seem to regard it as more or less inconsistent with the principles of Roman law, upon which the law of the Colony is based. Their lordships are unable to find adequate grounds for this view and it was not maintained at the Bar. It is not supported by the texts or decisions which illustrate the full recognition of the right of an owner freely to use his property for natural purposes even though loss to his neighbour may result. Nor, on the other hand, does the prominence given to *culpa* in Roman law preclude the reception of the doctrine now under consideration into legal systems founded on the civil law. The learned judges and also Kekewich J. in *National Telephone Co.* v. *Baker*, [1893] 2 Ch. 186, seem to have been inaccurately informed on the point, for as a matter of fact not only is the principle of *Rylands* v. *Fletcher* fully accepted in Scotland, but it had formed part of the law of Scotland before *Rylands* v. *Fletcher* was decided, and *Rylands* v. *Fletcher* has been treated by the Scottish Courts as an authoritative exposition of law common to both countries." So *Rylands* v. *Fletcher* is received into the Roman-Dutch law. Victrix causa deis placuit! Sir Henry de Villiers was on the other side.

I may mention next a case from British Guiana on the *law of nuisance*—*Demerara Electric Co.* v. *White*, [1907] A.C. 330. English cases alone are cited. The decision proceeds upon a consideration of the principles of law contained in *Metropolitan Asylum District* v. *Hill*, 6 App. Cas. 193, and in *London and Brighton Railway Co.* v. *Truman*, 11 App. Cas. 45.

The distinction between *penalties and liquidated damages* was not unknown to the Roman-Dutch law. But in *The Commissioner of Public Works* v. *Hill*, [1906] A.C. 368, an appeal from the Supreme Court of the Cape of Good Hope, the English law was applied (in the opinion pronounced by Lord Dunedin). "The House of Lords," said his lordship, "had occasion to review the law in the matter in the recent case of *Clyde Bank Engineering Co.* v. *Castaneda*. It is perhaps worthy of remark," he added, "in view of certain observations of the learned Chief Justice in the Court below, that that was a Scotch case—that is to say, decided according to the rules of

a system of law which is based directly on the civil law, and where no complications in the matter of pleadings had ever been introduced by the separation of common law and equity."

One more instance in conclusion. The rule in *Kelner* v. *Baxter*, L.R. 2 C.P. 174, is known to English lawyers. In *Natal Land and Colonisation Co.* v. *Pauline Colliery*, [1904] A.C. 120, I find it applied—no reference whatever being made to the Roman-Dutch law, which however would doubtless have led to the same result.

Third Group: Cases raising Important Issues of Constitutional Law.—To show that the Roman-Dutch Colonies have contributed in no small measure to the development of the law of the Constitution, I may mention *Cameron* v. *Kyte*, 3 Knapp 332, on the powers of colonial governors; *In re the Lord Bishop of Natal*, 3 Moo. N.S. 115, on the prerogative of the Crown to create new Courts of Justice; *McDermott* v. *The Judges of British Guiana*, L.R. 2 P.C. 341, on the power to commit for contempt of Court; *Le Mesurier* v. *Le Mesurier*, [1895] A.C. 517, on domicile and matrimonial jurisdiction; *R.* v. *Marais*, [1902] A.C. 51, on martial law; and *de Jager* v. *Agent-General of Natal*, [1907] A.C. 326, on allegiance.

I have now passed in review such of the cases taken in appeal to the Judicial Committee from the Roman-Dutch Colonies as I thought likely to interest you. You are waiting perhaps for the moral and conclusion of my story. Well, it may be that, like many other stories, it has no moral, and the only conclusion is the full-stop at which we shall soon arrive. Yet—if I have not failed in my purpose—I have shown you how important a rôle the Judicial Committee has played and is playing in the evolution of the various systems of law in the British Empire. Its activities are intermittent, for they only affect directly such matters as come before it for determination. Its activities are largely unconscious, for it implies no disrespect to say that their lordships are as a rule only partly acquainted with the manifold systems of law which they administer. But the influence thus exercised is enormous in its far-reaching consequences. The modes of its operation are mainly the following:

First.—The Judicial Committee expunges from the law rules and institutions which, in its judgment, are not in conformity with the conditions of modern life. Thus the lex Anastasiana disables the assignee of an obligation or mortgage from recovering from a debtor a larger sum of money than he himself paid to his assignor in exchange for the assignment. This obsolete rule received its quietus for British Guiana in *Macrae* v. *Goodman*, 5 Moo P.C. 315, at the hands of Knight Bruce V.C., just as later for Cape Colony at the hands of de Villiers C.J. in *Seaville* v. *Colley*, 9 Cape Col. S.C. Rep. 39.[1]

[1] See Morice, *English and Roman-Dutch Law*, p. 93, and Wessels, *History of the Roman-Dutch Law*, p. 390.

Secondly.—Where the Roman-Dutch law and the law of England (and more particularly of Scotland) seem identical or near akin, the Judicial Committee displays a marked tendency to resort to English and Scotch authorities. Discreetly exercised, this tendency is, I humbly suppose, beneficial. It makes the law fuller, more intelligible, more instinct with life than it could be if it depended entirely upon the texts of the Roman-Dutch writers of past generations.

Thirdly.—Where the Roman-Dutch law is silent, or is thought to be silent, the Judicial Committee is prone to base its opinions on English or Scots law. I am afraid that the body of the Roman-Dutch law does not always take kindly to the alien graft.

Fourthly.—In matters of constitutional law, and broadly in all questions of public law, the rules and principles of English law are allowed to prevail.

Fifthly.—The influence of the Judicial Committee extends far beyond the limited scope of the cases which actually come before it in appeal from the Roman-Dutch Colonies. In this connection I cannot do better than quote the language used by the Hon. Mr. Justice Wessels in his recently published *History of the Roman-Dutch Law*, p. 391.

"The judgments of the Judicial Committee of the Privy Council," says the learned author, "have had a very great influence upon the decisions of the South African Courts. I do not allude to those cases which have gone to the Privy Council from South African Courts, and where their decision is that of an ultimate Court of Appeal, but to decisions of the Privy Council on commercial questions raised in other Colonies where the Roman-Dutch law does not prevail.

"Judges as a rule do not like their decisions upset on appeal, and where they find a decision of the Privy Council on a question raised in Australia, they will apply it to a similar set of facts brought before a South African Court, unless the distinction between Roman-Dutch and English law is very flagrant. If the two systems can, with not too much subtlety, be brought to harmonise, the voice of the Privy Council will prevail. Even to *obiter dicta* of the Privy Council great weight is attached. This is only natural, for the Roman-Dutch law is not a system with which the Judicial Committee have grown up, and it must often be difficult for the judges who have laid down a principle as applying to an Australian case to recognise the finer distinctions between the law of contract as it prevails in England and the principles adopted by the Roman-Dutch law. Hence South African judges conclude that what the Privy Council have applied to an Australian case they will in all probability apply to a South African dispute, and therefore they attach more importance to a dictum of the Privy Council than to the decisions of other Courts."

The learned author might have carried the matter still further, for as indicated above, the decision of the Privy Council in *Trimble* v. *Hall*, 5 App. Cas. 342, in relation to the construction of statutes, practically

requires the Colonial Court to follow, not the decisions of the Privy Council merely, but even the decisions of the English Court of Appeal, and *a fortiori* of the House of Lords.

Two words in conclusion, the first by way of historical parallel, the second a practical recommendation.

The historical parallel is this :

Historians have been puzzled by the so-called reception of the civil law in a large part of Germany and in Holland. To some of them it has seemed incapable of explanation. It is agreed, however, that with the establishment of the Supreme Court of Mechlin the reception of the Roman law as the basis of the common law was assured (Wessels, p. 126). Much the same influence is being exercised by the Privy Council in South Africa, and is all the more remarkable, for the forces of resistance of the whole *ius civile* are (in this case) fighting not for the reception, but against it. Perhaps some person with more leisure than myself will work out the parallel.

My practical recommendation is this :

A Bill is before Parliament entitled the Appellate Jurisdiction Act, 1908. It was introduced in the House of Lords by the Lord Chancellor, and has gone through all its stages in the Upper House. It empowers the Judicial Committee to summon as assessors to its deliberations judges or ex-judges from certain Colonies specified in the schedule to the Bill. No doubt the Lord Chancellor has good reasons for so limiting the scope of the proposed enactment, but if one may venture to express a hope in the matter it would be that the Legislature should see fit to extend the same advantages to the other dependencies of the Crown; for Justice is not measured by mileage nor summed up in acres, and those who are "Centinels and Watchmen to consult of and for the publique good" in the Supreme Court of Appellate Jurisdiction from the Colonies should have powers to consult with equal providence for the least as for the greatest, for the Crown Colonies no less than for the Dominions of Canada and New Zealand or for the Commonwealth of Australia, or the self-governing Colonies of South Africa.

[*Note.*—The Bill has passed through the House of Commons without the proposed change. The above paragraph is, nevertheless, retained.—R. W. L.]

THE INTERNATIONAL LAW ASSOCIATION AT PESTH.

[*Contributed by* T. Baty, Esq., D.C.L.]

Pesth is a pleasant city, albeit the ingenuous traveller who journeys thither expecting to find mosques and turbaned Turks, will have a long search for them. Modern Pesth, bright, clean, and brilliant, sits in her cafés overlooking the broad Danube, and welcomes the Western stranger with a Western welcome which is Eastern only in the lavishness of its hospitality.

The International Law Association was the gratified recipient of this welcome last September, at its "silver wedding," or Twenty-fifth Conference. A particularly notable feature of the meeting was the energetic way in which the Hungarian hosts threw themselves into the business both of organising its arrangements and of actively participating in its discussions. In this connection it would be unfair to refrain from mentioning the names of Dr. Král and Dr. E. Wittmann and their colleagues, Judge Szladitz, and Drs. G. Baumgarten, M. Berger, and R. Vambéry, who acted as Secretaries to a Reception Committee of which the Presidents were Drs. Töry, F. Nagy, and Brüll, C.M.G. (to all of whom likewise great thanks and credit are due); nor must we omit to add that the Hungarian Government, represented at the Conference by H. E. Dr. Antál Günther (Minister of State for Justice, and Hon. President of the Conference), gave invaluable support to the proceedings. At their close the Conference was received at the Palace of Buda by H.I.H. the Archduke Joseph, on behalf of the King-Emperor.

The most important practical work accomplished was the adoption of a revised version of the Association's thirty-year-old "Bremen Rules," with the history of which your readers are familiar through the articles of Mr. W. J. Barnard Byles and the present writer, contributed to this Journal, vol. vii. p. 323, and viii. p. 229. The Conference was fortunate in having the presence of Mr. Byles at Pesth, and he contributed an important paper to the discussion. With other material, it was referred to a strong sub-committee (Mr. Justice Phillimore, President of the Association, Mr. Barnard Byles, Professor Riesser of Berlin, Professor F. Nagy of Pesth, Dr. Sichermann of Kassa, Hungary, Dr. G. Barbey, of Paris, and Prince Cassuno, assisted by another Hungarian jurist, Dr. Hantos), formed to report on the papers submitted on this topic to the Conference. The

committee was able, after prolonged discussion—(the particulars of which will be found in *The Law Times* for November 14, 1908)—to recommend unanimously a series of rules; which were, with a few amendments, suggested by Sir Thomas Barclay, Sir H. H. Shepherd, and others, unanimously accepted by the Conference. Attention may specially be drawn to the fact that these rules were not the result of majority votes, which are conclusive of little. They were the unanimous recommendation of German, French, English, and neutral lawyers as to what would be a fair compromise between their respective systems. On the whole, they are less Germanic than the Bremen Rules are. In two cases (the negotiability of an overdue bill, and the recognition of the *aval*) the English rule has given way to the French; and in others (the necessity of a bill bearing its description, as such, on its face, and the maintenance of recourse, less damages, in spite of failure to give notice of dishonour) it yields to the German system. The limitation period is fixed at eighteen months, to suit continental ideas. But the technical German *creationstheorie*, which holds an uncommunicated cancellation irrevocable, is negatived, and the validity of bills to bearer is recognised; and it is laid down that there is no necessity, as there is in Germany, to express the date and place of drawing. Days of grace are, as in most of our Colonies, abolished. For a fuller and more precise account, we refer our readers to Dr. Sichermann's article in *The Law Times* of the date above mentioned.

It is believed that opinion in the commercial world is generally favourable to these changes. English mercantile circles would probably be willing to adopt them for foreign bills. The great difficulty arises from the fact that it would be imperative to adopt them for inland bills as well, since (1) these latter must be liable to circulate abroad, and (2) a duplicate law of bills would be confusing to the point of being intolerable.

The Conference also discussed Extradition (in which debate Mr. J. A. Barratt and the officers of the Hungarian Ministry of Justice took prominent part), Sale of Goods Internationally Regarded (Professors Jitta and Newman, and Dr. Laszlö), Exterritorial Waters (Dr. Dardáy, of Fiume, and Mr. Whitelocke, of Baltimore), Double Taxation (Dr. Wittmann and Mr. Stuart Robertson), Workmen's Compensation (Dr. Baumgarten and Dr. G. Páp), the Legal Position of Seamen in France (Dr. Govare) and of Shipmasters in Hungary (Judge Benyovits).

Under the general head of Procedure, Mr. E. Todd (now Chief Magistrate of Hampstead) gave an interesting comparative sketch of English and continental law regarding (1) business books as evidence, (2) succession, (3) *conseils de famille*, (4) summary judgments, and (5) foreign judgments; whilst Dr. Doroghi (Pesth) dealt with Commissions for the Authentication of Foreign Law in Court Process, and Dr. I. Hévisi (*ibid.*) recommended the Association to take up its useful Code of Rules adopted some years ago at Glasgow for the Recognition of Foreign Judgments.

A Hungarian professor expressed a wish that the Association should organise a yearly *compte rendu* of all public documents relating to Arbitration. It was pointed out that this was already most effectively done by the voluntary labour of Dr. Evans Darby, who gave on this occasion his usual careful summary, and who was followed by Sir Thomas Barclay. The latter did not seem to think the new Prize Court established at The Hague likely to be of any utility so long as it has no law to apply—in which criticism we respectfully concur. The President of the Institute of International law (Professor Gabla) sent a paper on Divorce *in fraudem legis*, and Mr. Charteris (Glasgow) analysed the Marriage with Foreigners Act of 1906, showing that it is not yet in full operation for want of the necessary conventions, and incidentally examining the ambiguity of the phrase "subject to" the marriage law of a given country. Mr. J. A. Barrett presented an interim report of the committee on divorce jurisdiction, which is engaged in obtaining information from different countries on the topic.

Professor Sanderson (Cairo) read a useful paper on the recent decisions in Egypt on the status of companies registered in England;—as to which the present writer has elsewhere observed that the capitulation system, which stops short at withdrawing individuals from the local jurisdiction and leaves out of account juristic persons, is as difficult to reconcile with the exigencies of modern commerce as is the accepted theory of non-intercourse with hostile merchants. Both are calculated to raise difficulties which a Leibnitz could not solve. Dr. Zoltan (Judge in the Mixed Courts) followed Professor Sanderson with a few observations directed to show that these Courts limit their competence to cases of an individual foreigner being sued. Mr. Dessen (London) was unfortunately prevented by reasons of health from appearing to advocate the unification of Road Traffic Regulations. From his paper, which was presented to the Conference, it will be observed that the advent of motors has made the intending regulation of land traffic almost as urgent a matter as the regulation of sea traffic to which we are now so well accustomed.

We must mention also an elaborate paper by Dr. Barbey on the Strike Clause in Relation to Demurrage, in which he expounded and criticised Messrs. Jentzen and Myhré's suggestions for the equitable repartition of the loss flowing from strikes in docks, between the shipowner and the charterer. Mr. Zamperley (Newcastle) offered some valuable remarks on the subject from his experience of the recent Baltic and White Sea Conference at Stockholm. Other important papers were presented by Professor F. Nágy on Hungarian Law, and by Lord Justice Kennedy on Blockade. The last-mentioned paper, taken with the learned author's contributions to the proceedings of the Conferences of 1906 and 1907, on The Exemption of Private Property from Maritime Capture and on Blockade respectively, lay the Association under a great debt of obligation to him. Under the rules of the society, Mr. Justice Phillimore now

vacates the Presidency, which he has held with so much distinction for three years, during which four successive Conferences have taken place and Lord Justice Kennedy succeeds to the post.

It is needless to add how untiring the Hungarians were in providing pleasures and entertainments for their visitors. The unique fish of Lake Baleton—the *fogas*—was in evidence at three banquets; the Court performance at the Opera was attended by the members of the Conference, and less formal festivities—receptions, teas, and excursions—were too numerous to be mentioned.

JUDICIARY AND STATUTE LAW.

[*Contributed by* JULIUS HIRSCHFELD, ESQ.]

IN these days, when signs are not wanting that England is beginning to occupy herself for practical ends with the methods of other nations, it may perhaps be not inappropriate to call to mind that she still stands alone in having done next to nothing towards bringing under one roof the vast multitude of scattered fragments of her law and moulding the amorphous conglomeration of its rules and principles into something which could go by the name of a scientific system. Instead of that, she goes on endlessly piling Pelions upon Ossas of decisions and statutes, with that most grotesque (though indispensable) fiction writ large over all, that "Everybody is presumed to know the law."

In 1863 Lord Westbury said in the House of Lords: "The wisdom and excellence of Lord Bacon's proposal for the compiling and amendment of the law of England have been admitted from age to age, and the fact that nothing has been done to give effect to it, we must attribute to the singular inertia that characterises the English Legislature."

And Austin before him had said in his *Lectures on Jurisprudence:* "Such are the evils of judicial legislation that it would seem that the expediency of a code (or of a complete or exclusive body of State law) will hardly admit of a doubt, nor would it, provided that the chaos of judiciary law, and of the statute law struck patch-wise on the judiciary, could be superseded by a good code."

Supposing now the "inertia" was no longer so potent, and could be overcome with a little resolution, then the question would arise: Could we at the present time produce a good code?

Of course nobody could *a priori* give an answer with any degree of certainty. But when we survey the immense amount of legal literature, much of it of undoubtedly high merit, which in the course of the last decade has been and is still being constantly turned out, shall we be justified in taking the pessimistic view that the present generation of English lawyers would not have "den Beruf zur Gesetzgebung" (which Savigny at the beginning of the nineteenth century denied to his contemporaries), and that we could not find men quite as well equipped for the task as the

redactors of the Code Napoléon and those of the German Civil Code were for their tasks ?

And here I keep (apart from the little codes which have been successfully produced since 1882) my eyes chiefly on works which in their nature are somewhat cognate to the work of codifying, at least in its preliminary stages. I mean such publications as the excellent *Encyclopædia of the Laws of England*, of which a new edition is nearly completed ; Mr. Jenks's *Digest of the English Law*, based on the system of the German Code, which, though unavoidably bearing a non-indigenous stamp, gives high testimony of the faculty of lucid and sure consolidation under great difficulties ; and *The Laws of England* under the chief editorship of the Earl of Halsbury, following on the lines of the Royal Commission of 1867 for the exposition of a digest of the law. And it is particularly interesting to note that the editor is not discouraged by the view taken by the members of that Commission, viz., that "a work of this nature could not be accomplished by private enterprise and that it must be executed by public authority and at the national expense."

True, the aim of the Commissioners of 1867 went beyond that of Lord Halsbury, who with modest reserve and only impliedly hints at the service which his collection of treatises might perhaps ultimately render towards clearing the ground for a codified system, whilst the Commissioners pointed to the latter object as directly involved in their own task. They say : "However excellent such separate treatises may be, they do not give the aid and guidance that would be afforded by a complete exposition of the law in a uniform shape. A digest correctly framed and revised from time to time would go far to remedy the evils we have pointed out. It would bring the mass of the law within a moderate compass and it would give order and method to the constituent parts. Such a Digest would, in our judgment, be highly beneficial—would, moreover, be the best preparation for a code if at any future time codification of the law should be resolved on."

And the Commissioners did not express their views on the desirability of a digest with supervening codification in an indifferent spirit. They declared it to be an act of national duty to make an end to a state of things where the law, which everybody was supposed to know, was deposited in 100,000 cases contained in 1,300 volumes.

The Commission was after their first report no more heard of, and the 1,300 volumes of decisions, together with the forty-five volumes of statutes, remained the only recognised source and exposition of the law. When, therefore, Lord Halsbury observes that "if such a Commission could not achieve a result, the task must be hopeless," I venture, with the greatest respect, to demur, as it might have been a case of euthanasia—not necessarily suicide in despair.

At any rate the practical aspect of things is still the same as described by Austin (p. 675, *l.c.*) : "The ordinary course is this : A man enters into

some transaction (say for example a contract) either without advice or with the advice of an incompetent attorney. By consequence he gets into a scrape. Finding himself in a scrape he submits a case through his attorney to counsel. And for the fee to attorney and counsel he has the exquisite satisfaction of learning with certainty that the mischief is irremediable." I would add that he is comparatively lucky if he learns it in this way. In many cases he will only learn it after having gone through the much more costly and painful process of litigation. Yet it would be unfair to blame either attorney or counsel for contingencies of the latter description. How can they, in view of that entangled state of things, be certain about anything? Why should they carry Quixotism so far as regularly to say "Don't," if the client believes in his good cause, even when they are not so sure about the strength of his case. Besides, "the unexpected mostly happens."

There may still be case-loving lawyers who would argue that judiciary law is in many respects superior to legislation. Austin himself has something to say against the detractors of the former; but I cannot suppress a slight suspicion that in doing so he was not altogether influenced by objective reasons, but also, perhaps unconsciously, by his antagonism to Bentham and the latter's attack on "judge-made" law, which Austin apparently considered sciolistic. On the other hand, he himself gives seven reasons against such judiciary law which it would be hard to refute.

In favour of judiciary law two points are generally advanced, viz. (1) its consistency and coherence, and (2) its elasticity, enabling Courts to evolve rules of law. Supposing that is so, I admit that such merit would quite as much be inherent in a good code; the former, because a system would not be such unless consistent and coherent; the latter, because the development which might go on by way of interpretation of judge-made rules would quite as well apply to legislative rules—provided they are good—wide without being vague. Besides, if occasion arises new rules are easier grafted on statutory than on common law.

However, I will try and show by means of a single example that even the above-claimed merits cannot implicitly be conceded to judiciary law.

What is the attitude of the law in respect of a sale in which one of the parties has been unduly and grossly damnified? We remember that the Emperor Diocletian was all in sympathy with the seller who had sold a thing much below its value, giving as the sole reason that it was only "humane" that he should be entitled to have the thing restored to him against the return of the purchase-money. Great civilians held that the rescript was contrary to the spirit of the Roman law; and the practice in the Courts of Civil Law subsequently corrected that curiously oblique rule by giving the buyer an analogous remedy. When at the end of the eighteenth century the Prussian Code was drafted, the Commissioners were absolutely opposed to the view taken by the Roman Emperor, which they considered arbitrary and mischievous. On the other hand, they adopted

the principle (of *læsio enormis*), in exceptional cases, in favour of buyers, raising a (refutable) *præsumptio* of error. The Code Napoléon provides: "Seller is responsible for hidden defects, even if he did not know of them, unless it had been stipulated that he shall not be bound by any (implied) warranty." The Austrian Code (1811): "A person transferring a thing to another for a consideration warrants that the same has the qualities which it is customarily supposed to have. If the defects are apparent, no warranty is implied." The Italian Code (1865): "The seller is liable to warrant the thing in respect of latent faults or defects rendering it unfit for the use for which it is intended or diminishing its use-value to such an extent that the buyer would not have acquired it or would have offered a lower price. Seller is liable for latent faults even if he has not known them, unless he has stipulated to the contrary." (I confine myself to the Codes passed prior to 1882, the year of the Sale of Goods Act.)

We thus find that the distinct tendency of all those Codes is to extend considerable protection to the buyer, which seems only right in view of the circumstances in which sales are regularly effected.

The English common law stands apart in its partiality against the buyer. Here the maxim "Caveat emptor" has crept in. We know not whence it has come or what its original purport may have been. Its beginning is lost in darkness (the Statute of Westminster II. relating only to real property and title does not assist us), and the only judicial explanation contained in the books appears to be that by Parke J. (in *Morley* v. *Attenborough*, 3 Exch. p. 511), who suggests that it probably owes its origin to the fact that in early times nearly all sales of goods took place in market overt. But I doubt whether that dictum can find acceptance, considering that the notion of "market overt" serves to protect the buyer, and a warning to him in the market-place would therefore be rather incongruous. Besides, that could only have reference to the title.

But how did it come to be applied to the quality and condition of goods?

The oldest case in the books, governed by that maxim, or perhaps responsible for it, is *Chandelor* v. *Lupus* (1603), 2 Smith Leading Cases 54. A jeweller sells a stone as a Bezoar stone at the price of such. It turns out to be an ordinary stone. The buyer brings an action and wins his case in the King's Bench. In error the judgment is reversed. Reason: "A bare affirmation that it was a Bezoar stone, without guaranteeing it to be so, gives no cause of action, although seller knew it to be no Bezoar stone. This is not material." It is especially interesting to note that the judge of first instance does not seem to have known the most important principle that a vendor unless he says expressly "I warrant," or "I guarantee," or something "amounting" to the same (cf. *Cave* v. *Coleman*, 3 M. & R. 2), is allowed by the law to commit any gross fraud.

On this leading case, so far as appears from the records, seems to rest the doctrine which has produced judgments which must have shocked

the honest conscience of former generations, as it would shock the conscience of the man in the street at the present day. It was formalism *in excelsis*—with the equity of which English jurisprudence is so justly proud, rigidly excluded. And it went on from precedent to precedent.

I will pick out a few cases, turning with more or less variation on that maxim which adorns the books of the nineteenth century. There is *Parkinson* v. *Lee* (1802), 2 East 314. Hops were sold by sample with the guarantee that the bulk corresponded with the sample. The former proved unmerchantable. Judgment against buyer. *Budd* v. *Fairmanner* (1831), 8 Bing. 48: A colt had been sold as four years old which afterwards turned out to be much older. Judgment against buyer. *Omrod* v. *Huth* (1845), 4 Mec. & W.: Cotton was sold upon the representation that the bulk corresponded with the sample, but no warranty was given. The bulk turned out of inferior quality. Judgment against buyer. *Barnby* v. *Bollett* (1847), 16 Mec. & W. 644: The carcass of a pig was sold for consumption. It turned out to be diseased. In the Court of Exchequer judgment was given for buyer. The Exchequer Chamber reversed that judgment in favour of the seller. *Hopkins* v. *Tankeray* (1854), 15 C.B. 130: Sale of a horse. Seller affirming: "I assure you he is perfectly sound." He turned out to be unsound. Judgment against buyer.

Now between this series of anti-buyer cases we have others which bear testimony to a different phase of thought. There is *Power* v. *Barham* (1836), Ad. & E. iv. "Four pictures, Canaletti," were advertised for sale. They turned out not to be by Canaletto. The seller's plea that the "style" of Canaletto only was meant was rejected. Judgment for buyer. In 1838 judgment was given in favour of a buyer who had bought a ship on a voyage, which at the time of the transaction was already a wreck. The jury's verdict was that the subject-matter of the sale had ceased to be a ship and was only a bundle of timber (*Barr* v. *Gibson*, 3 M. & W. 390). In *Brown* v. *Eddington* (1841), 2 Scott N.R., a crane rope was ordered for the express purpose of raising pipes. The rope turned out unfit. The seller was held liable for damage on the ground of an implied warranty.

Now where was the maxim "Caveat emptor" in the latter set of cases as compared with the other? Of course I shall be told that the cases were "distinguished" and quite correctly decided. But what about common sense and fairness? Reconcile, for example, *Barnby* v. *Bollett* with *Barr* v. *Gibson*. In the latter case the ship certainly may have ceased to be a ship. Yet it was at least something. But the carcass of a pig, in a diseased condition, is nothing, and probably even worse than nothing, as it would entail to the buyer the cost of removal and destruction.

In the circumstances, can it be maintained that the judiciary law here shows itself particularly consistent and coherent? And does it prove any specific attitude for the evolution of the law in the right direction?

The judges in dealing with cases of this kind expressed different sentiments. In *Jones* v. *Just*, 3 Q.B. 67, for instance, the judge was inclined to be apologetic, saying: "This at least must be maintained, that 'Caveat emptor' was never applied when no opportunity for inspection was given." On the other hand, Lord Mansfield (in *Vernon* v. *Keyes*, 4 Taunton) remarked "that which every seller in this town does every day who tells every falsehood he can to induce a buyer to purchase."

Legislation came at last to the rescue in 1882, and supplied that which judiciary law could not effect, by placing the relations between seller and buyer on a rational and fair basis.

Yet "Caveat emptor" has not been quite exorcised and is still a bugbear, disturbing commerce and making foreign merchants nervous in entering into transactions with English traders. This was pointed out at the last Congress of the International Law Association at Buda-Pesth.

Even that otherwise admirable little Sale of Goods Act has thus failed to dispel that notion altogether. And I believe the fault lies partly in the method of draftsmanship, into which Sir Mackenzie Chalmers initiates us in his "Introductions" to his various text-books in a most lucid and interesting manner. The fundamental rule for drafting those codes, as laid down by the late Lord Herschell, was a strict adherence to the judiciary law, avoiding all and any attempts at altering and improving—the latter process to be left to the Legislature. Now, considering the hurry of political life, one cannot wonder if lacunæ remain and amendments go astray. Codifications on a large scale would of course, at the outset, have to go unhampered by such restrictions and to work in a progressive and reformatory spirit.

And codification would not only be good for the law, it would also be good for the legal profession. Austin already observed that codification would make decentralisation feasible. The highly involved state of our law makes specialisation in a very high degree, and consequently centralisation, inevitable.

At the beginning of the 'eighties of the last century prominent men were publicly advocating a scheme of codification of the whole law, and Lord Herschell then estimated that the work would not cost more than a single battleship. I believe that it could now be done for less.

THE NEW TURKISH CONSTITUTION

[*Contributed by* NORMAN BENTWICH, ESQ.]

THE Constitution of Turkey, which has been granted as the outcome of the peaceful revolution of the Young Turks, whether regarded in the light of its origin or of its contents, is a most interesting document. The spirit of personal liberty and constitutional government spring up therein full-grown, like a new Athena, as it were, from the head of the most autocratic sovereign of Europe, armed with the full panoply of parliamentary executive and judicial institutions which have grown up in the course of ages among other peoples. To Englishmen, who have not a fixed constitution, and whose most cherished rights depend often upon traditional understandings and tacit principles, it is especially remarkable to notice how, with a number of detailed Laws about the rights and constitution of the Ministry, the Senate, the Chamber of Deputies, and the Courts of Law, there is set out explicitly a series of first principles touching the rights of the subject which, from their unbroken acceptance here since the time of Magna Charta, seem axiomatic. And it is not less remarkable to find provisions, which mark an advance upon the public Law of many Western States, side by side with statements of elementary duties and with the foundation of some dangerous prerogatives. The English Constitution, the mother of parliamentary governments, seems to have been the chief model of the Turkish reformers, but in the relations of the Ministry to the Parliament and in the constitution of the Senate there is imitation rather of Continental States. We propose to summarise the Constitution, adding a few notes upon provisions which seem noteworthy.

Provisions of the Constitution.—The first Article states that "The Ottoman Empire comprises the present territory and possessions and semi-dependent provinces. It forms one indivisible whole, from which no portion can be detached under any pretext whatever."

In view of events which immediately followed the grant of the Constitution this Article has an ironical ring, but it is significant that the new régime is headed by a political declaration of this kind. The party of progress is also the party which will fight against the disintegration of the empire; and the note of Turkish national pride is repeated in several later provisions.

The Constitution is in part an attempt to weld the diverse subjects of the Sultan into one united whole.

By Article 2 Constantinople is declared to be the capital of the empire; and the next five Articles describe the position and powers and prerogatives of the Sultan. The sovereignty belongs to the eldest prince of the House of Osman, who is also the Supreme Caliph of Islamism and the protector of the Mussulman religion. He is irresponsible and his person is sacred, and the lives of the members of the Imperial Dynasty, together with their property and their liberty, are under the guarantee of all the people. His sovereign rights resemble those which the English sovereign holds in theory but for some time will probably be more directly exercised. He dismisses and appoints ministers; he controls the coining of money; he concludes treaties; he declares war and makes peace; he commands the military and naval forces; he administers the Sacred Law (*Cheri*); he respites or commutes sentences pronounced by the Criminal Courts; he summons and prorogues the General Assembly; he dissolves, if he deems it necessary, the Chamber of Deputies, but he is bound in that case to direct the election of new members within a limited time.

The next section of the Constitution deals with the public rights of the citizen. All subjects of the empire are Ottomans, whatever faith they profess (Art. 8). This Law, again, marks the desire to create a national feeling among the heterogeneous populations of Turkey. "Every Ottoman enjoys personal liberty on condition of not interfering with the liberty of others, and this liberty is inviolable," *i.e.* he may not suffer imprisonment except by due process of Law (Arts. 9 & 10).

Islamism is the State religion, but at the same time the State will protect the free exercise of all faiths professed in the empire and uphold the religious privileges granted to various bodies, on condition that public order and morality are respected (Art. 11).

By Article 12 freedom of the Press is granted, within limits imposed by the Law—presumably the Law of libel—and by Article 15 freedom of education. Every Ottoman can attend public or private instruction on condition of conforming to the Law, and all schools are placed under State supervision. These provisions, if they become effective, should help more than anything else to establish a new order in Turkey, for the denial of the free expression of opinion and the restrictions on education have been in the past the chief obstacles to progress. The right is given to form companies industrial, agricultural, and commercial; and to present petitions to the authorities relating to the disturbance of law and order, and likewise to the General Assembly complaining of the conduct of State officials (Arts. 13 & 14).

All Ottomans are equal in the eye of the Law, without prejudice to their religious beliefs; they are admissible to public offices according to their fitness, merit, and ability; but a knowledge of Turkish, which

is the official language of the State, is a necessary qualification (Arts. 17, 18, and 19).

Taxes are to be assessed in proportion to the fortunes of the taxpayers, and no sum of money can be exacted under the name of tax or impost except by a Law duly passed. Confiscation of property, forced levies, and forced labour are prohibited, saving only contributions levied in time of war and measures rendered necessary by the exigencies of war (Arts. 20, 24, and 25).

Property lawfully acquired is guaranteed. There can be no dispossession by the State save on good public cause shown, and subject to the payment of fair compensation. The home is inviolable, and cannot be entered by the authorities except in cases prescribed by Law. No man is bound to appear before any other than a competent and lawfully constituted tribunal; and torture and inquisition are wholly and absolutely forbidden (Arts. 21, 22, and 26).

The charter of liberties seems to be complete save only that no right of public meeting appears to be provided, and trial by jury is not introduced.

The third section deals with Ministers of the Crown, of whom the chief is the Grand Vizier, appointed by the Sultan at his pleasure (Art. 27). He holds a position more like that of the Imperial German Chancellor than the English Prime Minister, for he not only presides over the Cabinet of Ministers which considers all important affairs of State, domestic or foreign, but he exercises a general control over every department of State and takes action on the measures presented to him by the heads of departments, either by referring them to the Cabinet and then presenting them for the Imperial sanction, or by deciding on them himself and then referring them to the approval of the Sultan.

The ministers, however, are declared to be responsible for their Acts and measures, and power is given to members of the Chamber of Deputies to lodge a complaint against any minister which, at the discretion of the President of the Assembly and a special Committee of the House, may be brought before the whole Chamber. If the Committee's report is adopted, an address praying for the trial of the minister is to be transmitted to the Grand Vizier and will be remitted by the Sultan to the High Court.

This procedure has some of the characteristics of the old English impeachment, but is an improvement on it, in that the Court which finally tries the issue is not an exclusively political tribunal, though it will act under special rules (Arts. 30-32).

Suits between ministers and private individuals in respect of private causes are to be judged by the ordinary tribunals. Each minister, though appointed independently of the General Assembly, has the right to be present or be represented at the sittings of either House, and when requested by a vote to appear to give explanations he is bound to reply. When the General Assembly is not in session a minister may adopt measures to

protect the State which have provisionally the force of law, but they must be submitted to the Assembly immediately upon its meeting. In case of a conflict between ministers and the Chamber of Deputies upon a Bill on which the minister is of opinion that he should insist, the Sultan may change his ministers or dissolve the Chamber, subject to a new election within a limited period (Arts. 35 and 36).

One of the Articles dealing with public officials is noteworthy: it makes obedience due to a superior only when the orders given are legal; and in respect of acts contrary to law the fact of having obeyed a superior will not relieve the official who has performed them from responsibility. This law adopts one of the well-known principles of the English Constitution.

The next and longest section of the Constitution treats of the General Assembly, which corresponds with Parliament and is composed, in accordance with the best models, of two Chambers, the Senate and the Chamber of Deputies, which are to sit annually from November 1 to March 1. Neither Chamber can assemble when the other is not sitting, but the sittings may be prolonged or abridged at the discretion of the Sultan. The opening of the Session will be marked by an Imperial Speech, answering in substance to the King's Speech of our Parliament. All the members of the Assembly are to take an oath of fidelity and to bind themselves to observe the Constitution, and they are free to express their opinions and vote as they like; they cannot be bound by any promises or conditions, or prosecuted for opinions or votes in the course of debate (Arts. 46 and 47).

Part of this provision appears to embody the spirit of the recent English decision that it is against public policy for a Member of Parliament to contract to obey any party whip.

Voting must be in person; no business may he transacted in either Chamber unless more than half the members are present. Resolutions must be carried by an absolute majority of members present (Arts. 49 & 51).

The ministers in general have the initiative of bringing forward a Bill or altering an existing law; but the Senate or Chamber of Deputies may originate a new, or amend an old law, referring to matters within their province, and their Bill may be adopted by the Sultan and enacted (Art. 53).

A draft Bill once thrown out by either Chamber cannot be brought forward a second time in the same Session; and before it is carried each article of it and the whole Bill must be passed by a majority of votes in both Chambers (Arts. 54 & 55).

The debates are to be conducted in the Turkish language, a knowledge of which is here again made a condition of entering public life. Votes are given by show of hands, or by ballot if a majority of members so resolve.

The Senate.—Turkey is free from those difficulties of historical tradition which make the reform of the second English Chamber so hard to effect, and the Constitution provides for a Second Chamber filled up on a reasonable

system and endowed with definite functions. The President and members of her Senate are to be nominated for life directly by the Sultan, and are not to exceed a third of the members of the Lower House. In order to be nominated a man must be at least forty years old, and have shown by his acts that he is worthy of public confidence or have rendered signal service to the State. Senators are to receive a stipend of 10,000 piastres a month, but if already holding a paid office they receive only the difference between their salary and their stipend (Arts. 60 to 63).

The Senate is essentially a revising Chamber. It is to examine Bills sent up from the Chamber of Deputies and if it finds a provision contrary to the sovereign rights of the Sultan, or to liberty, or the Constitution, etc., it either rejects it definitely by a vote, assigning its reasons, or it sends the Bill back, with its observations, to the Lower House, demanding that it should be modified or amended in the sense of those observations. It also examines petitions and transmits those which it thinks deserving of reference, with its observations, to the Vizier.

The Chamber of Deputies.—The constitution of the Turkish Chamber of Deputies is also more logical and uniform than that of our House of Commons, the clean slate with which the reformers started enabling them to avoid some of the inconsistencies which appear in historical constitutions. There is one Deputy for every 50,000 males belonging to the Ottoman nationality, who is to be elected by secret ballot. No public office can be held together with the post of Deputy, save that of a minister; any official elected may accept or refuse election, but if he accepts he must resign his other functions (Arts. 65 and 67).

A number of persons are declared ineligible as Deputies, among them those who are not of Ottoman nationality, who do not understand Turkish, who are under thirty years of age, who are attached to the service of a private individual, who are undischarged bankrupts, who are notoriously in disrepute for their conduct, and who are under judicial sentence. The national note is further emphasised by a provision that, after the first period of four years, eligibility will be dependent upon the ability to read Turkish, and, as far as possible (whatever that may mean), to write in that language (Art. 68).

The Government is anxious, it seems, to avoid the difficulties of language which have occurred in the heterogeneous parliament of the Austro-Hungarian Empire.

General elections of Deputies are to be held every four years, and are to commence at least four months before November 1, when the Chamber meets (Arts. 69 and 70).

Although the Deputy is to be chosen from among the inhabitants of the province to which the electors belong, every member represents the whole of the Ottoman people, and not exclusively the district which has elected him (Arts. 71 & 72). This is an admirable declaration of con-

stitutional law which Western countries might imitate. In case of the dissolution of the Chamber by Imperial decree a general election must be held in such time that the Chamber may meet again within six months of the date of dissolution.

Each Deputy is to receive 20,000 piastres per Session and a travelling allowance, and he cannot during the Session be arrested or prosecuted except in case of flagrant crime, unless a majority of the Chamber authorises his prosecution (Arts. 76 and 79).

The President and the two Vice-Presidents of the Chamber are selected by the Sultan from a list of nine candidates elected by the Chamber by a majority of votes.

The sittings are public in general, but the Chamber may form itself into Secret Committee on the motion of the ministers or the President, or fifteen members, which is adopted by vote (Arts. 77 and 78).

The work of the Chamber is to discuss the Bills submitted to it, to adopt, amend, or reject provisions affecting finances or the Constitution, to examine the Budget and settle the yearly expenditure with the ministers, and to determine with the ministers the nature, amount, and mode of assessment of the revenue (Art. 80).

The Judiciary.—Next follow the provisions for the Courts of Law and the Supreme Court of Justice.

The judges, who are to be nominated by a special Law, are irremovable, but may resign. The sittings of the tribunals are public and the publication of judgments is authorised (Arts. 81 and 82). No tribunal can under any pretext refuse to judge an affair within its competence; it cannot arrest or adjourn judgment after it has commenced the hearing, unless the plaintiff desists, and in criminal matters the public prosecutor continues in spite of the plaintiff's desisting.

There are separate tribunals for the Sacred Law (*Cheri*) and the Civil Law; but there is no *Droit administratif*; suits between individuals and the State being within the competence of the ordinary tribunals. Nor, apart from the ordinary tribunals, can extraordinary Courts or Commissions be formed to judge special cases; but arbitration and the nomination of a referee are sanctioned, in accordance with established usage (Arts. 85 to 89).

No judge is to exercise any other State functions. But the Supreme Court is to be formed of thirty members, of whom ten must be Senators, ten Councillors of State, and ten chosen from among the Presidents and members of the Courts of Cassation and Appeal. Its members are elected by lot from these groups, and it is only convoked when necessary by Imperial decree. Its functions are to try the ministers or the President and members of the Court of Cassation, and all other persons accused of treason or attempts against the safety of the State (Art. 92).

It resembles, therefore, in part the French Conseil d'État, in part the ancient English High Court of Parliament; but in its power to try any

attempt against the safety of the State there may lurk a considerable danger to individual liberty and the independence of the judiciary. Its constitution is somewhat remarkable. The High Court is divided into two Chambers—the Chamber of Accusation and the Chamber of Judgment; the former is composed of nine members chosen by lot equally from the three bodies constituting the Court, and its verdict must obtain a majority of two-thirds of its members before it is sent up to the Chamber of Judgment (Arts. 93 and 94).

The Chamber of Judgment is formed of twenty-one members, of whom seven are Senators, seven State Councillors, and seven members of the Court of Cassation or Court of Appeal. Its decisions on cases sent up by the Chamber of Accusation likewise require a majority of two-thirds of its members, and it is to judge according to the regular laws. There is no appeal from its sentences (Art. 95).

The last two parts of the Constitution deal with Finance, *i.e.* the levying of taxes; and with Provincial Administration, of which the general principle is declared to be decentralisation. The details of the provincial organisation are to be fixed by subsequent legislation, but it is provided here that there shall be a General Council to meet annually in the chief town of each province, which shall deliberate on matters of public utility such as the establishment of means of communication, the development of manufactures and commerce, and the spread of education (Arts. 108-10).

The administrative subdivisions of the Province (Vilayet) are the District (Sandjak) and Carton (Kaza). In each Kaza there is to be a council composed of members elected by each of the different (religious) committees, which will be charged with the control of—

(1) The administration of the revenues of real property or of wakouf estates (charitable foundations), of which the special destination has been fixed by the expressed dispositions of the founders, or by usage.

(2) The employment of charitable funds or property affected with a charitable purpose by testamentary dispositions.

(3) The administration of funds of orphans (Art. 111).

These local councils are proof of the willingness of the Turks to grant equality to the various religious denominations which are gathered in the Empire. The demands of some of the communities for local autonomy may indeed go further; for already the feelen are agitating for the complete control of the education of their children, and they resist the attempt to place all the schools under State supervision and to make Turkish the language of instruction. It is possible, therefore, that the powers of the local councils of the denominations will be extended to cover the control of educational institutions.

Finally the Constitution contains a few miscellaneous dispositions which affect various rights previously given (Arts. 113-9).

When the Imperial Government has proof of or apprehends danger in any part of the Empire, it may proclaim there a state of siege, which has

the same effect as the proclamation of martial law in the English dominions, *i.e.* it causes a temporary suspension of the civil laws and brings into effect a special law which is to be enacted. The Sultan has the exclusive power by expelling from the Empire any persons who, upon trustworthy information collected by the administration of police, are recognised as dangerous to the safety of the State. This power is analogous to that recently exercised by the executive in India under the terms of the special Act to prevent seditious conspiracy.

Another article makes elementary education obligatory for all Mussulmans; but it is noteworthy that compulsory education is not provided for the members of other creeds, so that it is likely that in the near future Turkey will have two classes of schools as we had here till lately: State-schools for the established religion and voluntary schools for others. Provision is made for the alteration of the Constitution. The proposed change must be submitted in the first place to the Chamber of Deputies and be passed there by a two-thirds majority of the members, and must then receive a similar majority in the Senate. Finally it is submitted to the sanction of the Sultan, and if it obtains his assent it is promulgated by Imperial Iradé and has the force of law.

The interpretation of the laws is divided between the Court of Cassation, which decides upon the civil and penal laws; the Council of State, which, as in France, determines the scope of administrative laws; and the Senate, which settles disputed points of the Constitution. This division of the interpretative function does not seem as admirable as the English practice, which draws no distinction between different kinds of law, and leaves their interpretation altogether to the ordinary Courts of the land, or the American practice, which entrusts the determination of the Constitution to the Supreme Federal Court. It is another instance of increasing the powers of the Executive beyond what is considered desirable in democratic countries.

The large powers given to the Vizier and the existence of the special Court for the trial of political offenders are the two points in the Constitution which would appear to menace the liberty which constitutional government requires for its proper development and is intended to secure. And doubtless it is inevitable that, in a country which has been ruled so long by a small body of officials, the Executive should for a time retain larger powers than it enjoys in countries where parliamentary government has long been established. The Chamber of Deputies has, however, already shown its independence and its determination to establish the reality as well as the semblance of popular control over the government by bringing about the dismissal of the first Vizier appointed since the Constitution was granted. An attempt was indeed made in the House to impeach the fallen minister, but it failed to win any support. The Cabinet crisis and the constitutional way in which it was solved are hopeful auguries for the future smooth working of

laws which, when originally enacted in 1876, were not given a fair trial because there was then no great popular force behind the reform party. To-day that popular force exists and is dominant. Of course, it is possible that provisions which are admirable on paper may be nullified in practice; but, so far as present indications go, the spirit of the Turkish people is now for reform and free institutions, and the Constitution is but one expression of a Renaissance which has revolutionised their whole outlook. If that spirit is maintained, the grant of the Constitution will mark an epoch, not only in the history of Turkey, but in the history of the civilised world; for it will prove that Eastern peoples are as capable as Western of enjoying and developing progressive political institutions.

Note.—The writer of this paper desires to express his obligations to the editor of *The Hellenic Herald*, who has allowed him to make use of the English translation of the Constitution which has appeared in that paper.

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REVIEW OF LEGISLATION, 1907.

INTRODUCTION.

[*Contributed by* Sir Courtenay Ilbert, K.C.B., K.C.S.I.]

This preliminary note cannot do more than glance at a few of the more important and interesting features of the legislation of 1907.

The public general Acts of the Parliament at Westminster were fifty-six in number, and included the Territorial and Reserve Forces Act, which reorganised the reserves, the militia, and the volunteers; the Act for establishing a Criminal Court of Appeal, the Small Holdings and Allotments Act, and the Act which legalised marriage with a deceased wife's sister.

In India the legislation of the year will perhaps be chiefly remembered for the law which dealt with seditious meetings.

The establishment of the Australian Commonwealth does not appear to have affected materially the legislative activity of the constituent States.

New South Wales supplemented its Old Age Pension Act by a measure providing for invalid pensions.

We are indebted to Mr. Zichy Woinarski and Professor Harrison Moore for a full and useful summary of the Victorian Acts, which are very numerous and extend over most of the field of what is called social legislation. An amending Act restored for old age pensions the maximum limit of 10*s.* a week, which had been reduced to 8*s.* by an Act of 1891. The permanent appropriation for pensions was raised from £150,000 to £250,000. A Factory Act gave power to extend the operation of the Wages Board to any business usually carried on in a shop, carting or driving, building and quarrying and business connected therewith (but not including agriculture), the sale or distribution of coal, coke, or wood, or the preparation of firewood for sale. It fixed the rate of payment for overtime, and of allowances for "tea-money." The Closer Settlement Acts were amended. There was a comprehensive Forest Act establishing a State Forests Department under a Minister of Forests. An Infant Protection Act authorised the Government to establish maternity houses, infant asylums, and separate cottage houses for the care of infants and mothers, and amended and supplemented in various ways the principal Act of 1890. An Indeterminate Sentences

Act dealt mainly with the instinctive and habitual criminal, endeavoured to make the punishment fit, not the crime, but the criminal, and provided for lenient treatment of first offenders. A Gold Buyers Act made more stringent the provisions against fraud in gold-buying and against gold-stealing from mines. These are only a few among the numerous Acts of the year.

South Australia dealt with habitual criminals, passed a stringent Act against gaming and betting, consolidated the factory law in a comprehensive measure of 167 sections, and enabled coroners to hold inquests in certain cases without a jury.

Queensland followed the example of many other legislatures by establishing special Courts for dealing with children.

Tasmania dealt with juvenile smoking and infant life protection.

The output of legislation in New Zealand was very extensive, and included an Act for confirming preferential tariff arrangements with South Africa. The Legislature fixed a minimum rate of wages for factories, imposed a graduated land tax on the unimproved value of land, and required Chinese immigrants to pass an examination in English as a condition of admission. The Tohunga Suppression Act, after reciting that "designing persons known as tohungas practise on the superstition or credulity of the Maori people by pretending to possess supernatural powers in the treatment and cure of disease, the foretelling of future events, and otherwise, and thereby induce the Maoris to neglect their proper occupation and gather into meetings where their substance is consumed and their minds are unsettled, to the injury of themselves and of the Maori people generally," made it an offence to practise as a tohunga.

There is a natural transition from such an enactment to Africa. The dominant notes of Cape Colony legislation in 1907 were retrenchment and taxation. The Legislature reduced the pay of all public servants, including Ministers of the Crown and members of Parliament, to the uniform extent of 5 per cent. on their salary and emoluments. It modified the succession duties, imposed new stamp duties, and passed an Income Tax Act in substitution for the Act of 1902. The new Act gives a comprehensive definition of income, and elaborately graduates the tax in proportion to the amount of income. The Legislature amended the Constitution Ordinance of the Colony in such a manner as to expedite general elections. Under the new law one polling day is to be fixed for the whole Colony, and elections will be proceeded with almost simultaneously.

The advocates of "pure beer" and "pure whisky" will be glad to learn that, under another Act of 1907, after January 1, 1909, whisky may not be sold in the Colony as "malt whisky" unless it is derived solely from malt by pot-still distillation, and, as from varying dates, no beverage may be sold as "beer" unless it consists of the alcoholic liquid obtained by a fermentation of a mash of malt, with or without cereals, flavoured with hops. But, according to the Attorney-General, the most important measure of the

session, and the best received in both Houses, was the Usury Act, of which a very full summary is given. It severely penalises usury, applies to all persons, whether they are money-lenders or not, but does not apply to "mercantile transactions between commercial men." Another Act of the same session is aimed at "bogus loan companies."

Much might be said about legislation in other parts of the British dominions and protectorates, but the briefest of passing references must suffice.

In the East African Protectorate slavery was abolished as from October 1, 1907. Saskatchewan passed an Interpretation Act. Bermuda passed a Criminal Code modelled on the Queensland Code. Mr. Harcourt Malcolm, on behalf of the Bahama Bar Association, has sent an interesting review of the recent course of legislation in the Bahamas, with statistics as to the origin and fate of bills, and the number of Acts passed. We learn incidentally that the practice of engrossing Bills, which was abolished by the Parliament at Westminster in 1849, survived until quite recently in the Bahamas. Probably many other archaisms of legislative procedure, originally borrowed from Westminster, still survive in the daughter legislatures.

It required much courage to grapple with a group of legislatures which in a single year passed no less than 16,064 Acts. But Mr. Newton Crane, in reviewing the United States legislation of 1907, has performed his task with his usual skill. It is true that of the portentous number of Acts passed more than half were "private, local, or temporary enactments, having but slight, if any, interest to the general public, whilst many others were of a tentative character," the lawmakers being, according to Mr. Crane, "encouraged to experiment in legislation by the knowledge that the Judiciary is superior to the Legislature, and is ever ready to put its veto upon measures which are, in the opinion of the judges, contrary to the existing Constitution." Ninety-nine statutes were, it appears, thus vetoed in 1907. In the same year over a hundred amendments to the various Constitutions were submitted by the Legislatures to the vote of the people, a State Constitution being capable of amendment only by the people themselves. In most cases, however, these amendments involved no principle, but were made necessary by the growing tendency of American Constitutions to regulate matters which in other countries would be left to ordinary legislation. A similar symptom of distrust of the legislature is discernible in the opinion which appears to be growing up in favour of the referendum. A proposed amendment to the Constitution of Missouri proposed to give the people at large both the initiative in proposing laws and the power to reject them, but it does not appear from Mr. Crane's statement whether the amendment was made or not. Many of the enactments of the year deal with matters which have been recently occupying the attention of the Parliament at Westminster. For instance, Arkansas and Florida have passed laws making it a misdemeanour to disturb an assemblage in a church or school, or a public meeting, and there are

laws relating to habitual criminals, juvenile offenders, and licensing. Total prohibition of the sale of intoxicating liquors appears to be growing in favour, especially in the Southern States. The variety of the marriage laws has been increased by numerous amendments. In Utah, which was once the land of polygamy, marriage between first cousins, or within the fifth degree of consanguinity, is now void.

The most important legislative achievement of the year 1907 was the passing of the Swiss Civil Code. It had been in preparation for some thirty years, and a basis for it was provided by Professor Eugen Huber's great work on *The History and Principles of Swiss Civil Law.* On December 10, 1907, the Swiss Legislative Council adopted it by a unanimous vote, and it became law subject to the provisions of the referendum, under which a new Law must be submitted to a popular vote, if such a submission is demanded by 30,000 Swiss citizens within three months after the publication of the Law in the Federal *Gazette.* This period expired without such a demand having been made, but the new Law does not come into operation until January 1, 1912. It contains the whole of the civil law with the exception of the law of contracts or obligations, which had been codified by a Federal Act of 1881. But it is understood that this Act will be repealed, and its contents embodied in the General Code, before the date at which the latter comes into operation.

The Code is divided into four parts, relating respectively to persons, families, inheritance, and property, the law of contract, as observed above, being left outstanding for the present. For an account of the provisions of the Code readers must be referred to the excellent summary which has been supplied to this Journal by Dr. Carl Wieland of Basle. The Code deserves careful study by all who are interested in comparative law, and might with advantage form the basis of a course of lectures in some one or more of our places of legal education.

Those who are interested in the law of copyright will do well to note the provisions of the new German law as to artistic copyright, which consolidates, amends, and extends the scope of the two separate statutes passed on that subject in 1876.

Most of the legislation under review belongs to the year 1907, but the editors of the Journal have wisely made an exception in favour of the New Turkish Constitution (see p. 329), of which Mr. Norman Bentwich has given an extremely interesting account, based on a translation which appeared in the *Hellenic Herald.* How this Constitution will work in practice is a question which is now engaging the sympathetic attention of the whole civilised world. All that can be said at present is that its provisions are bold, ingenious, and suggestive, and are evidently based on a careful study of other Constitutions. Members of the Chamber of Deputies are elected by secret ballot, there being one member for every 50,000 males belonging to the Ottoman nationality. A deputy must be chosen from among the inhabitants of the province to which the elector belongs, but every deputy is declared by the Constitution to

represent the whole of the Ottoman people, and not exclusively the district which elected him. The members of the Senate, or second Chamber, are nominated for life by the Sultan, and must not exceed in number one-third of the members of the Lower House. The Senate does not initiate legislation, but has power to reject Bills or return them with a message requiring their amendment.

FOREIGN.

1. CHINA.

THE Chinese legislation during the present year has been scanty and of slight importance. The first draft of a Criminal Code has been published, and is now awaiting the Imperial sanction.

A Civil Code is also in course of preparation. An account of both these measures will appear later in the Journal from the pen of Mr. Chung Hiu Wang, the author of *A Chinese Commentary on the German Civil Code*.

2. EGYPT.

[*Contributed by* W. E. BRUNYATE, ESQ., C.M.G., *Khedivial Counsellor.*]

Laws of General Public Interest—13.

Census.—Law No. 1 appoints village head-men, village sheikhs, sheikhs of Beduin tribes, sheikhs of quarters in towns, and tax-collectors to be enumerators for the purposes of the census ordered by Law No. 17 of 1906, and defines their duties. Power is taken to appoint any other persons, service being obligatory. Most of the persons appointed under the compulsory powers were Government servants.

Criminal Procedure.—Law No. 6 increases the powers of Markaz Tribunals from a month's imprisonment and fine of E.£2 to three months' imprisonment and fine of E.£10 and adds to the offences within their jurisdiction theft of any object of a less value than 5*s.* and public offences against decency. Law No. 7 confers upon the veterinary officers of the Municipality of Alexandria the powers of officers of judicial police. Law No. 8 repeals and re-enacts with slight amendments a Decree of 1902, fixing the fees of Government doctors and veterinary surgeons who are employed as witnesses or as experts in criminal cases. Law No. 9 provides that offences committed in or in connection with the mining districts in the Eastern desert may be tried before the most convenient Court instead of that within the district of which they are committed and confers upon officers of judicial police attached to the Desert Police powers of arrest and inquiry which elsewhere are vested exclusively in the Parquet. The promulgation of the law was immediately followed by the decision of the Government not to proceed with the organisation of a Desert Police.

Education.—Law No. 2 creates a training school for Cadis and for officers of the Mehkemehs. Designed to conciliate Mohammedan feeling, it makes the school an integral part of the University of El Azhar and directs that its graduates shall receive the diplomas of the University. The students are to be recruited from students who have already passed three years at the University. The full course of study extends over nine years. The sheikh of the University has a general power of supervision over the school, presides at examinations and sits on the managing committee, but the controlling voice appears to be possessed by the Ministry of Education.

Law No. 11 increases the members of the Superior Council of Education (reorganised in 1906) from 10 to 12.

Expropriation.—Law No. 5, as to expropriation for purposes of public utility, reproduces for application by the Native Tribunals the provisions of Law No. 27 of 1906 (applicable by the Mixed Tribunals).

Finance.—Law No. 13 is the Annual Budget. A feature worthy of note is the disappearance from the receipts side of the Budget of the proceeds of sale of Government lands and the proceeds of Military Exemption Tax. It appears from the accompanying note that it is proposed to carry the former straight to the Reserve Fund as a capital receipt and to apply the latter, in some manner thereafter to be determined, for the benefit of the less fortunate conscripts who are unable to purchase exemption.

Mehkemehs.—Law No. 3 renders Cadis of the Central Mehkemehs qualified to sit in the place of District Cadis.

Public Health.—Law No. 4 provides for the slaughter or isolation of animals suffering from, or suspected of, lymphangitis.

Taxation.—Law No. 10 provides for the assessment to land-tax, in accordance with the general readjustment then approaching completion, of the lands in the hands of the Domains Administration and contains provisions for the assessment of all other lands which for special reasons had been omitted from the readjustment. There is a repeal of a Law of 1903 which textually modified an earlier decree; the exact effect of the repeal is difficult to determine.

Law No. 12 modifies the boundaries of the towns of Minia and Beni-Suef for the purposes of house-tax.

3. FRANCE.

The Legislation for 1907 will appear later on in this year.

4. GERMANY (1906–7).

[*Contributed by* ERNEST J. SCHUSTER, ESQ., LL.D.]

General Observations.—Most of the projects referred to in the last review of German legislation contained in this Journal (N.S. No. XVI.) have hitherto remained projects. The reform of criminal law and of criminal and civil procedure still occupies the public departments and holds the field among the subjects of discussion at lawyers' meetings and congresses: it will no doubt be carried out some day, but it is impossible to say when that day will come. The legislation of the years 1906 and 1907 includes no enactment of general interest except the Statute relating to artistic copyright, to which more detailed reference is made below. The year 1908 has been more fertile in important legislation: the Statute on Cheques has already been reported upon in this Journal (N.S. No. XIX. pp. 79-83), but the Statutes regulating the law of political and other associations, the law as to insurance contracts, and the law as to time bargains in stocks and produce, which were all passed during the current year, will form the subject of our next review of German legislation.

Statute relating to Copyright in Works produced by the Formative Arts and Photographs.—The German law as to literary and musical copyright was remodelled by the Statute of 1901 (see this Journal, N.S. No. X. pp. 188-9); the law as to artistic copyright, which was hitherto regulated by two separate statutes passed in 1876, has been consolidated and adapted to modern ideas by the Statute which, as mentioned above, was passed in 1907. The former law gave protection to paintings, drawings, and engravings, to works of sculpture and to photographs; the new law extends its protection to works of architecture constructed with artistic aims, and to works belonging to the domain of artistic handicrafts as well as to the plans and designs made prior to the execution of any such works. Works produced by processes similar to the photographic processes are to be entitled to the same protection as photographs. The scope of the new Statute is therefore considerably wider than that of the previous law on the same subject.

The protection given to the owner of any artistic copyright has also been extended. Whereas under the former German law—as is still the case under English law (see *Martin* v. *Wright*, 6 Sim. 297)—the public exhibition of a work of art or of a copy thereof did not constitute an infringement of copyright, the new Statute expressly gives the author of a work of art or his successor in title the exclusive right to exhibit the same for purposes of trade by means of optical or mechanical devices. As under the former law, protection is given to unpublished as well as to published works.

A reproduction constituting in itself an original work of art is not deemed

to be an infringement of the author's right, and the reproduction of works remaining permanently in public streets or places, by means of drawings, paintings, engravings or photographs, is permissible in any case. The reproduction of works of art in books published for scientific or educational purposes is also allowed, nor is it an infringement for any person to copy a work of art without remuneration for his own use. The construction of an artistic building being a copy of one entitled to copyright is, however, forbidden, though the copying architect receives no reward and intends to live in such building; if A builds his soul "a stately pleasure house," B may be restrained from vexing him by building one exactly alike.

Elaborate provisions are contained in the new Statute in respect of portraits. Under the former German law, which corresponded to the present English law on the subject, the copyright in a portrait executed on commission for valuable consideration—in the absence of an express agreement to the contrary—passed to the person by whom such commission was given. The new German law provides that the person by whom a portrait was ordered shall, during the author's life, not be allowed to reproduce it except by means of photography unless the contrary shall have been expressly agreed upon. On the other hand, the portrait of a person is not in any case to be published, or exhibited without his or her consent (such consent to be presumed in any case in which he or she has received a remuneration for allowing the portrait to be taken). During the first ten years after the death of a person, the consent of his or her nearest relatives is required. The consent is not required in the case of portraits of persons belonging to contemporary history, in the case of pictures in which portraits are mere accessories, in the case of portraits not taken on commission of which the publication or exhibition serves "a higher interest of art," or in the case of portraits published or exhibited for the purpose of facilitating the administration of justice or the preservation of public order.[1]

The difficult question as to who is to be looked upon as the author of a photograph (see *Nottage* v. *Jackson*, 11 Q.B.D. 627) is not solved by the new Statute. It is, however, provided that as to all works of art and all photographs containing an indication as to the author's name, either by explicit mention or by means of initials or other visible signs, the name so indicated shall be presumed to be the author's name, and that as to works of art produced or published under a name other than the author's name, or containing no indication as to the author's name, the editor and, in the absence of the editor, the publisher, is to be entitled to safeguard the author's rights.

As in the case of literary and artistic copyright, the author's right, while remaining vested in him is not available for his creditors during his lifetime;

[1] The last-mentioned exception was no doubt inserted *ex abundante cautelâ*. It is hardly conceivable that a person accused of a criminal offence whose portrait is published for the purpose of facilitating his capture should apply for an injunction restraining the publication of such portrait, or for the imposition of a fine on the printer or publisher.

after his death the copyright in published works forms part of the assets for the payment of debts, but the copyright in unpublished works remains exempt from seizure.

The protection continues for thirty years beyond the author's life, in the case of any work produced by one of the formative arts, and for ten years after the publication in the case of photographs. Under the former German law photographs were only protected for five years after publication; under English law they are, in the same way as paintings, protected for seven years beyond the author's death.

One great advantage of the Statute of which a summary has been given is that it creates a uniform law as to all branches of artistic copyright, whilst in this country such uniformity has not as yet been attained, notwithstanding the fact that thirty years ago the Copyright Commission made a strong recommendation in its favour.

On the other hand some of the provisions of the new German law will cause a great difficulty to the Courts, while others seem of questionable practical value. How can it be decided whether a given building has been constructed with artistic aims or whether a given article (say a particular iron gate, a particular chair, or a particular inkstand) is the product of an artistic handicraft?[1]

What plaintiff wishing to restrain the exhibition of his portrait will be able to stuff his ears sufficiently to make himself deaf to the Siren song of a defendant who pleads that he or she (the plaintiff) is a personage belonging to contemporary history, or that the exhibition of his or her portrait serves a higher artistic purpose? The reports of the proceedings in the course of which such questions are tried may sometimes furnish interesting and amusing reading.

5. SWEDEN.

Owing to the lamented death of Mr. Nils Setterwell, the contributor to the Journal in former years, this summary is unavoidably postponed.

6. SWITZERLAND: REPORT ON THE SWISS CIVIL CODE OF 1906.

[*Contributed by* CARL WIELAND, ESQ., LL.D., *of Basle.*]

Swiss Civil Code.—On December 10, 1907, the Legislative Councils adopted the Swiss Civil Code, which had been in preparation for thirty years, by a unanimous vote. Unanimous votes are rare in the history of

[1] Chambers of experts are to be found in each German State, whose duty it will be to advise the Courts in any matter on which such advice is required, but the Courts are not bound to seek such advice or to follow it when it has been given.

Swiss legislation, and much credit is therefore due to the compiler, Professor Eugen Huber, whose work, in four volumes, on *The History and Principles of Swiss Civil Law*, provided a basis for the future systematic Code. The Federal Constitution of Switzerland provides that every new Law must be submitted to a popular vote, should this be demanded within three months from the publication of the Law in the Federal Gazette, by thirty thousand Swiss citizens who possess the franchise (Referendum). The three months expired on March 21, 1908, and, since no demand for a popular vote had been made, the Law was definitely established. It does not, however, become operative until January 1, 1912. We shall content ourselves with indicating some of the most important points among the valuable material which it contains.

The Code contains the whole of the Civil Law with the exception of the law of contract, which had already been regulated uniformly for the whole of Switzerland by a Federal Act of 1881. The other parts of the Civil Law had hitherto been left to the legislatures of the Cantons. When the Civil Code comes into force Switzerland will enjoy uniformity throughout its Civil Law—a reform long delayed here in comparison with other countries whose territory is far more extensive.

The Code is divided into four parts: Law relating to persons, to families, to inheritance, and to property respectively. The Law of Contract is to be revised before the new Act comes into force, and then in like manner incorporated in the Code.

(i) **The Law of Persons** contains provisions concerning legal rights, legal capacities, and juristic persons. Every one has rights at Law. The old restrictions on these for religious reasons (entrance to a cloister) have been abolished. Full legal capacity commences with the attainment of majority, *i.e.* of the twentieth year. Children of tender years, lunatics, and excessive drunkards, have no legal capacity. Minors, persons suffering from mental or physical defects, thriftless persons, and convicts have a limited legal capacity. With the consent of their legal representative, they may undertake sales and enter into contracts.

Juristic persons are divided into commercial and non-commercial associations. The former are regulated by the Law of Contract. The Civil Code provides for non-commercial associations only. These obtain the status of persons without any preliminary formality; all that is required is the possession of written statutes.

(ii) **Law of the Family.**—The first part of the Law of the family deals with the contract of marriage and its dissolution. It reproduces in essentials, although with important modifications, the provisions of a Federal Act which was passed as early as 1874. The age at which marriage is legal is now fixed at twenty years for a man and eighteen years for a woman. Actions may now be brought demanding temporary separation in addition to those for divorce. The married woman retains all her legal capacities, and can

sue or be sued. The husband has no longer any right of guardianship over his wife, whose position is now much more free and independent. She enjoys equal rights with her husband over the care and education of the children. She may carry on a business of her own without her husband's consent. The husband can indeed provisionally prohibit such business; but, should there be no good cause for such prohibition, the wife can require the Courts to set it aside.

Property Rights.—The parties to a marriage may regulate their property as they please by means of a marriage settlement. If no marriage settlement is agreed to the wife remains the owner of her property. The husband, however, acquires a right to use and to administer his wife's property, as is also the case in the German Civic Law; but the wife may reserve to herself a separate "portion" (*Sondergut*) over which the husband exercises no legal control. The wife cannot dispose of such part of her property as her husband administers, nor can she burden it with debt. But she may incur liabilities; only, for debts which she incurs without her husband's sanction, the liability does not extend beyond her separate "portion." It can be agreed by the marriage settlement that all the property of both parties to the marriage should be held in common. Or, again, it can be agreed that the wife shall retain both ownership and free control of her property. In other respects the provisions for property in marriage are similar to those in English and North American legislation. The husband at once loses his right to administer his wife's property if he becomes a bankrupt. A wife can also demand that her property be restored to her free control so soon as it is endangered by her husband.

Relation between Parents and Children.—In this respect the Code contains a number of important innovations. In contradistinction to the majority of the cantonal Laws which have hitherto prevailed, adoption is recognised. The legal position of illegitimate children is much improved. In the French Cantons the maxim of French Law—"La recherche de la paternité est interdite"—is still in force, though it has recently been abandoned even in France. The Civil Code provides that both the mother and the guardian of an illegitimate child can bring an action to determine fatherhood against a male parent out of wedlock. The action is to obtain damages for the mother and maintenance for the child. If the male parent has promised marriage to the mother, or if the child is voluntarily recognised by the father, the child is given the family name of the father, and a right of settlement in the father's locality. Similarly the child acquires a limited right of inheritance against his father and the latter's relatives.

Guardianship.—Guardianship is exercised by the guardian and by the official trustees. At least two official trustees, independent of one another, must be nominated: the official guardian and the official inspector. In particular cases, for instance when a business forms part of the property of a ward, his family may exercise the functions of the official guardian.

The ward is placed under guardianship at his place of residence. Guardianship is imposed upon minors who are not under parental authority. Inasmuch as the mother retains the parental authority after the father's death, minors are only placed under guardianship if both parents are dead or if the parental authority is withdrawn. Guardianship is also imposed upon adults who, in consequence of mental disease or weakness, cannot manage their own concerns, or who are thriftless, or drunken, or have been condemned to imprisonment for a term of more than one year. In the case of physical defects—blindness, etc.—guardians can only be appointed on the request of the person affected. The ward suffers a restriction of legal capacity. Under certain circumstances, such as in illness, absence, etc., a legal representative (*Beistand*) may be appointed without any consequent diminution of legal capacity.

(iii) **Law of Inheritance.**—Legal heirs are divided into the following classes, on which the rights of inheritance devolve in succession: (*a*) descendants; (*b*) parents, and, if they are dead, brothers and sisters, etc.; (*c*) grandparents and their descendants; (*d*) great-grandparents. More distant relatives have no right of succession. Indeed, the great-grandparents obtain only the usufruct, whilst the ownership of the property passes to the community (commune or canton). Thus the normal right of inheritance ceases with the line of the grandparents. The surviving party to a marriage has a right to inherit as against other heirs. If the deceased leaves descendants, the survivor may demand at choice either the usufruct of half the inheritance or the ownership of a quarter of it. As against the heirs of the parents' family, the surviving party receives ownership of one quarter and usufruct of three-quarters; as against the heirs of the grandparents' family, he receives ownership of half the property, usufruct of the remaining half. Should there be no heirs of the grandparental line, the surviving party is the sole heir.

Testamentary dispositions are admissible, but only subject to the rights of the next-of-kin to receive their legitimate share. If the testator leave descendants, he can dispose by will of only one-quarter of what he leaves. If he leave parents, he can only dispose of one-half; if brothers and sisters, of three-quarters. If the testator is survived by husband or wife, the will is operative over one-half only. If the deceased is survived by the wife and other heirs, the whole testamentary disposition is inoperative. Acceptance of the inheritance by the nearest heirs is taken for granted. Unless they decline the inheritance within three months they are regarded as heirs. They are jointly liable for debts incurred by the estate up to their full property. Heirs can, however, demand that the estate should be liquidated officially. In such cases they are not liable for the debts of the estate.

(iv) **Law of Property.**—One part of the law of property, viz. the acquisition of ownership and of mortgage on movables by legal process, is already regulated by the Federal Law of 1881. The clauses in question

have been incorporated in the Civil Code, as that henceforth the entire Law of property will be set forth in this Code. The cantonal Law only continues to apply to a few subordinate points; but the public Law of the Cantons can, nevertheless, still limit or annul the right of ownership like all other property rights. Expropriation, in particular, as a department of public Law, still remains largely under the control of the Cantons. Ownership, and all other property rights in moveables, usufruct and right to mortgage, are based on transference of possession. As regards ownership and all other property rights in land, their only basis and means of transference are by an entry in the land register. The land register is so arranged that every plot is given its own leaf in the book (*Realfolium*), and on the leaf are entered all the rights with which the land in question is burdened or which belong to its owner. The land register is to be enriched by a survey and description of the plots. The surveying and construction of plans are still far from being completed for the whole of the Swiss territory. It is understood that they shall be carried out gradually, with the financial assistance of the Federal Government. The provisions of the Civil Code, however, in respect of the Law of property, and in particular the provisions for entries in the land register, are to take effect at once before the completion of the survey. The Federal Council determines from time to time for each separate Canton at what point entry in the land registry shall become obligatory. Further, the necessary regulations for the technical arrangement of the land register are to be issued in due course. Thus the Law of property will come into force gradually, and not all at once, like the other parts of the Law. The Civil Code sets forth conditions concerning ownership, tenancies, and mortgage rights. In regard to tenancies, the building right, corresponding to the English lease-system, deserves special attention. The building right (*Baurecht*) is a form of land tenure which carries with it the right to erect a building on the piece of land in question. When the building has been erected the tenant holding the right is its owner. He can freely dispose of or remove the building without the consent of the landowner. The right to build, like the building itself, may be transferred, mortgaged, and charged with other obligations, such as right of way, by the tenant who holds it, as though it were tangible property. For this end it is necessary that the right to build should be entered in the land register on a separate page. In this way associations for social service, *e.g.* workmen's dwellings, associations, etc., can obtain ownership of buildings without having to pay for the site, since the ground-rent still accrues to the landowner. The right to mortgage land is dealt with in detail. The law affords to those who seek credit a choice between three kinds of mortgage: (*a*) A mortgage combined with personal liability of the debtor (*Grundpfand-verscheibung*). The debtor in this case pledges the rest of his property in addition to the land. This kind of mortgage corresponds to the pledge in Roman Law

(*Hypotheka*). (*b*) A mortgage with limitation of liability to the land actually mortgaged (*Gült*). The debt in this case resembles a rent-charge. The creditor cannot demand repayment of the capital unless the owner reduces the value of the land or is behindhand in paying the yearly interest. This system meets the demand that it should be possible for the farmer to meet his requirements by means of an unredeemable loan. Mortgages of this type, since they must offer complete security, cannot be created to more than half the value of the property. Hence their imposition must be preceded by an official valuation of the land. In order to make the sale of the mortgage easy to the creditor, he receives a mortgage note, to which the rules for negotiable documents have application. Such mortgage notes have the same force as bills. Conditions which are not stated on the note cannot be maintained against the *bona-fide* purchaser. The mortgage note can be drawn out payable to bearer or on order; in the former case it is a bearer, in the latter an order, bill. (*c*) The third form of mortgage (*Schuldbrief*) combines elements of the two preceding forms. The debtor is personally liable. The debt may be redeemed. Nevertheless, the mortgage note in this case too is a negotiable document. This form of mortgage is the most practical, and, for the creditor, the most favourable. It is likely to be used especially for bankers' loans on mortgage. Finally, it is worth noticing that an owner can create both tenures and mortgages on his land. We may refer, lastly, to the provisions as to the order of claims, by which the Swiss Law is especially distinguished from the German. The Common Law principle according to which mortgage rights of the second rank replace those of the first rank as the latter are removed, is not recognised. On the contrary, the mortgage retains its original rank in spite of the removal of prior mortgages. The owner can thus at any time create a new first-rank mortgage in place of one which has been removed. The owner can also create a second-rank mortgage before any first-rank mortgage exists. Mortgages of different ranks thus constitute distinct capital values which can be disposed of by the owner at his pleasure. This is an advantage which has been hitherto unknown in many of the Swiss systems of Law.

7. UNITED STATES OF AMERICA—STATE LEGISLATION.

[*Contributed by* R. Newton Crane, Esq., *of the Middle Temple.*]

The output of legislation in the various States of the United States for the year 1907 is the largest for many years past. Forty-one regular and six special sessions of the numerous State Legislatures were held, this being the "odd" year, in which the Legislatures of those States which have only biennial sittings, meet. In all, no less than 16,064 Acts were

passed, more than half of which, however, were private, local, or temporary enactments, having but slight, if any, interest to the general public. Many others, moreover, were of a tentative character, the law-makers being encouraged to experiment in legislation by the knowledge that the Judiciary is superior to the Legislature, and is ever ready to put its veto upon measures which are, in the opinion of the judges, contrary to the existing constitutions.

Unconstitutional Statutes.—During the year no less than 99 Statutes passed by previous legislative bodies, all having been duly approved by both branches of the Legislature and the Executive, were declared to be unconstitutional. The reasons given by the judges in a number of cases are suggestive of the jealous care with which both the letter and the spirit of the provisions of the constitutions are guarded. In Arkansas, for instance, an Act prohibiting the issuance to employees of script not redeemable in money in payment of wages, was pronounced illegal because it constituted an unlawful discrimination and denied equal protection of the Laws to all citizens; and in Texas a similar statutory provision was declared to be unconstitutional on the ground that it interfered with the right of contract. An Indiana Statute requiring companies or associations to pay employees engaged in manual or mechanical labour at least monthly, was ruled to be unlawful, as imposing a burden on companies and associations not imposed on individuals, while in New York a Law prohibiting the employment of females and minors between 9 p.m. and 6 a.m. was declared unlawful so far as it related to adult women, as it discriminated against female citizens, and infringed, so far as it concerned them, their right to contract. In South Carolina a Statute providing that a person who receives advances under a contract to labour on a farm, and who wilfully fails to perform the labour, shall be guilty of a misdemeanour, was held to be unconstitutional because it discriminated against the labourer in favour of the employer. Several of the attempts to enforce observance of the restrictive temperance Laws were, in like manner, declared to be unlawful. Thus the Kentucky Statute prohibiting the shipment of intoxicants into no-licence territory, and the Maine Act, authorising the seizure of spirits while in transit, were held to be inoperative, as they interfered with inter-State commerce. The Missouri Legislature passed an Act making it a misdemeanour to give away intoxicants in local option districts, where the supply of drink had been prohibited. This the Supreme Court held to be an infringement of the liberty of the subject so far as it was an act of hospitality, but otherwise if it was connected with a business transaction. The Massachusetts and Michigan Statutes authorising the use of voting-machines, which are now largely employed with success in other States, notably in New York, were declared to be illegal because in one case they violated a provision requiring "written" votes, and, in the other, they forbade the right of secret ballot.

Proposed Constitutional Amendments.—Over 100 amendments to the

various constitutions were submitted by the Legislatures to the vote of the people, a State constitution being capable of amendment only by the people themselves. In the great majority of instances the proposed changes involved no principle, but were necessary in order to conform the Laws to more modern conditions. In many cases permission was thus asked to increase the compensation of the Judiciary, the Executive and the law-makers, and also to formulate new methods of taxation in order to enlarge the revenue of the State. Some of the propositions to increase the judges' salaries were carried, and in this and other ways there is an indication that the people are realising that, so long as judges' salaries are inadequate, the better class of lawyers will not be tempted to go upon the bench.

The Referendum.—The growing interest in the principle of permitting the people, independently of their representative legislators, to enact Laws, and to vote directly their approval of or dissent to Laws passed by the Legislature, is indicated by a proposed amendment to the constitution of the State of Missouri. The proposed amendment is in these terms:

> The legislative authority of the State shall be vested in a legislative assembly, consisting of a senate and house of representatives, but the people reserve to themselves power to propose laws and amendments to the Constitution, and to enact or reject the same at the polls, independent of the legislative assembly, and also reserve power at their own option to approve or reject at the polls any Act of the legislative assembly. The first power reserved by the people is the initiative, and not more than 8 per cent. of the legal voters in each of at least two-thirds of the congressional districts in the State shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the Secretary of State not less than four months before the election at which they are to be voted upon. The second power is the referendum, and it may be ordered (except as to Laws necessary for the immediate preservation of the public peace, health, or safety, and Laws making appropriations for the current expenses of the State Government, for the maintenance of the State institutions, and for the support of the public schools) either by the petition signed by 5 per cent. of the legal voters in each of at least two-thirds of the congressional districts in the State, or by the legislative assembly which passed the bill on which the referendum is demanded. The veto power of the Governor shall not extend to measures referred to the people. All elections on measures referred to the people of the State shall be had at the biennial regular general elections, except when the legislative assembly shall order a special election. Any measure referred to the people shall take effect and become the Law when it is approved by a majority of the votes cast thereon, and not otherwise.

Criminal Procedure: *Capital Offence.*—In Kansas the death-penalty for murder in the first degree has been abolished. In Montana, Nevada, and Missouri the jury, or the Court, may fix the penalty for murder in the first degree at death or life-imprisonment. In New Jersey electrocution is substituted for hanging, and the witnesses are restricted to four assistants to the principal keeper and six newspaper representatives.

Crimes against Public Order and Security.—In Arkansas and Florida laws have been passed making it a misdemeanour to disturb an assemblage in a church or school or public meeting, or to injure a place used for public gathering or worship. In North Carolina the use of profane language in a railway train, and in North Dakota the use of obscene language over the telephone, is prohibited. In Colorado, Montana, and Wisconsin it is made a misdemeanour to advertise cure for sexual, menstrual, or venereal diseases.

Crimes against the Person.—The frequency of child-stealing from wealthy parents in certain States has had the result of increasing the penalty for that offence; thus, in Indiana and New Jersey a convicted person may be sentenced to life-imprisonment, and in New York to twenty-five years' for abduction. College "hazing" is made a misdemeanour in California and Colorado, and in Michigan it is a misdemeanour to taunt a person with having been a convict.

Corrections and Criminal Punishments.—In Maine if the earnings of a prisoner in a penitentiary or house of correction exceed the expenses of his commitment and maintenance the balance must be paid to his dependent kindred. In Missouri 5 per cent. of his earnings may be used for the support of his family, and in Michigan he must be paid for whatever overtime he works.

Habitual Criminals.—What constitutes an "habitual criminal" has been defined by Statute in two States. Thus, in Indiana on the third conviction, and in New York on the fourth conviction for felony, the convicted person is deemed to be an habitual criminal. In the former State he may be sentenced to life-imprisonment and in the latter he may be pardoned but not discharged from imprisonment. But the most novel form of treatment of habitual criminals has also been devised in Indiana, where it has been provided by Statute that in institutions, including prisons, having the care and custody of confirmed criminals, idiots, rapists, and imbeciles, a staff of skilled surgeons shall be appointed to examine the mental and physical condition of the inmates, and, where the board of managers and the surgeons deem a case unimprovable, the surgeons may perform an operation for the prevention of procreation. This startling and novel experiment in sociology has not yet been submitted to the test of the Supreme Court to ascertain if it is constitutional.

Juvenile Offenders.—More than a score of States now have juvenile Courts, where provision is made for the hearing of charges against children under such circumstances as will separate them from contact with the persons and environment of adult criminals, and in which simpler procedure is adopted and a parental form of correction is sought. The punishment, where the convicted child is sentenced to confinement, is different from that of adults, and separates the juveniles from the other prisoners. The system of probation is also enforced.

Pardons, Parole, and Probations.—In Indiana, except for murder, arson

burglary, rape, treason and kidnapping, the Courts may parole a convicted person, but if a convict violates his parole the time during which he was at liberty does not count as part of his original sentence. In Missouri the trial Court may parole a person of previous good character, under twenty-five years of age, convicted for the first time. In Wisconsin, a board of control of prisoners and criminals, with the approval of the Governor of the State, may parole inmates of the penitentiary. In Massachusetts a convicted person may be released on probation on condition of making retribution to the person injured by the crime for which he was convicted. Such payments may be made by instalments through a probation officer. In Vermont any Court may discharge a person from probation or alter the conditions of his probation. In Wisconsin the Court may suspend the sentence upon a minor over sixteen years on conviction of misdemeanour or first felony.

Civil Law: Title to Property.—Minnesota joins the large number of western States which place a limit upon the holding by aliens of real property, by requiring that land acquired by non-resident aliens shall be disposed of in ten years. In Delaware the property of an intestate illegitimate descends to the mother or to her heirs. In Iowa the rule in Shelley's case has been abolished, and in Michigan it is provided that a child born after the making of the father's or mother's will shall take as if the parent died intestate.

Contracts and other Obligations.—The facility with which a dishonest trader has heretofore been able to obtain goods on credit and then sell his entire stock at a discount for ready cash has resulted in frauds of an aggravated character, which several States have passed Statutes to prevent. Thus in Florida a purchaser of goods in bulk is now obliged to notify the vendor's creditors, and in Nebraska, Nevada, New York, North Carolina, North Dakota, and Vermont the sale is void unless the creditors of the vendor have had previous notice. In Massachusetts and Missouri the damages for death caused by negligence are limited to $10,000, and in Oregon $7,500.

Marriage and Domestic Relations.—In Utah a marriage between first cousins, or within the fifth degree of consanguinity, or with a person afflicted with syphilis, gonorrhea, or chronic epilepsy, is void. In Wisconsin insane, feeble-minded, and epileptics may not marry, and it is a misdemeanour to solemnise or aid such marriage. In California an applicant for licence to marry must show the race of the parties, and, if the male is under twenty-one or the female under eighteen, the written consent of the parents must accompany the application. In Vermont a marriage licence may not be issued to an idiot or lunatic, and the written consent of the parents is prerequisite to a licence to minors. In California, Indiana, Iowa, New Hampshire, Oregon, South Dakota, Texas, Utah, and Washington it is a misdemeanour, and in Indiana it is a felony, for a parent to neglect to support his family. In the last-named State the punishment, upon conviction, is from one to three years' imprisonment and defranchisement for three years,

or a fine of $10 to $100, to which may be added one year in jail or the workhouse.

Foreign Corporations.—In Alabama, Arkansas, and Indiana foreign limited liability companies may not now receive a licence to do business in these States, unless they agree not to remove any action in which they may be engaged from the State to the Federal Courts.

Police Regulations: Amusements.—In Massachusetts it is a misdemeanour to admit to a place of amusement a child under fourteen unless accompanied by an adult, and in South Dakota to give theatrical or other entertainments for an admission fee on Sunday. In Michigan a child under seventeen is not allowed in a place where there is a bowling alley, and in North Dakota a person under eighteen, or attending a local high school, may not frequent a billiard, pool, bowling or card-room. In Rhode Island boys under fourteen and girls under sixteen are not at any time permitted to enter a theatre or music-hall unaccompanied by an adult. In Illinois it is a misdemeanour to sell tickets for theatres for more than the printed or advertised price, under a penalty of $200, or six months' imprisonment.

Intoxicating Liquors: Prohibition, Local Option.—Georgia prohibits the manufacture and sale of intoxicating liquors. So also does South Carolina, except in localities where the same is allowed by vote. Texas prohibits the storing of such liquors in districts where the sale is prohibited. In Nebraska it is a misdemeanour for a manufacturer of liquors, including beer, to be a retailer thereof, or to assist a retailer, or to own or lease premises for retailing the same. In Indiana railway companies selling alcoholic refreshments in dining-cars must pay a licence-fee of $1,000, and in New Mexico, $200. In Missouri, Montana, Alabama, Connecticut, Delaware, Florida, Indiana, Illinois, Iowa, Minnesota, and Wisconsin, heavy penalties are provided for selling intoxicating liquor to minors and females or admitting them to places where such liquors are sold. In Texas it is a misdemeanour to drink intoxicating liquor on a railway train, and in Delaware, except in a buffet-car. Many States now provide that liquors shall not be sold or public-houses licensed in the vicinity, in some cases within four miles, of a school or educational institution of any kind, or a railway construction camp, or barracks.

Cigarettes.—In Arkansas, Washington, and South Dakota it is a misdemeanour to sell or to give away cigarettes or cigarette-papers, even to adults. In Florida it is unlawful to sell cigarettes to minors. In Illinois persons under eighteen and over seven are forbidden to smoke cigarettes in public places.

BRITISH EMPIRE.

I. UNITED KINGDOM.

[*Contributed by* W. M. Graham-Harrison, Esq., *and* Hugh Godley, Esq.]

Acts passed—Public General, 56; Local, 176.

Out of some two hundred and thirty Bills introduced into the House of Commons, or brought down to it from the House of Lords, only fifty-six passed into law, a decrease by two on the number for the preceding year. Of the total of fifty-six, more than one-fifth were Government measures, private members being successful with their Bills only in ten cases.

The application of the Acts passed was as follows :—[1]

28	applied to the	United Kingdom.
9	„ „	England alone.
6	„ „	Scotland alone.
6	„ „	Ireland alone.
3	„ „	England and Ireland.
1	„ „	England and Scotland.
2	„ „	Colonies.
1	„ „	British Empire.

Advertisements Regulation (c. 27, U.K.).*—S. 2 empowers local authorities, as defined by the Act (viz. borough councils, certain urban district councils, and county councils: s. 7), to make by-laws (1) for regulating hoardings and similar structures used for the purpose of advertising when they exceed twelve feet in height, and (2) "for regulating, restricting, or preventing the exhibition of advertisements in such places and in such manner, or by such means, as to affect injuriously the amenities of a public park or pleasure promenade, or to disfigure the natural beauty of a landscape"; there is to be a limited saving in by-laws under the Act for hoardings, etc., in use at the time when the by-laws are made.

By-laws under the Act require the confirmation, in England, of the Home Secretary, and in Scotland and Ireland of a corresponding authority

[1] The expressions U.K., E., S., I., Col., and B.E., which follow the short titles of the various Acts, indicate the application in each case, and an * that the Bill for the Act was introduced by a private member.

(s. 3); and the powers under the Act are cumulative and not in substitution for existing powers under any local or general Act.

Army and Military Forces.—(i) *The Army (Annual) Act* (c. 2, B.E.), after the usual preamble (taken from the old Mutiny Acts), which fixes the number of the standing Army at 190,000, continues the Army Act in force for one year more. Hitherto the renewal of the Army Act has taken effect in all places outside Europe, other than the West Indies and America, as from December 31 in every year, but s. 2 of this Act, taking into account modern rapidity of communication, makes the Army Act expire in every place outside the British Islands on July 31, and thus in future years the date [*see* the Army (Annual) Act, 1904, s. 14] on which amendments of the Army Act take effect will be accelerated as regards all these places. The Act makes a considerable number of other amendments in the law relating to the Army, of which the following may be noticed:—

The scale of charges payable for officers and men when billeted is revised, the soldier when billeted is given a right to supper, and may have mineral water instead of beer (ss. 3 and 8, and First and Second Schedules). In every case where the commanding officer has power to deal with a case summarily the accused will have the right to demand that the evidence against him shall be taken on oath, which previously he had only the right to do if the offence was one for which the commanding officer could award more than seven days' imprisonment (s. 5). A number of detailed amendments are made (in the light of experience gained in the South African War) in the enactments relating to punishments in active service, and in particular power is given to inflict "field punishment" (which replaces the old term "summary punishment") for any offence whatsoever instead of only for a limited number of offences, and to inflict fines not exceeding three months' pay.

(ii) *Territorial and Reserve Forces* (c. 9, U.K.).—The object of this Act, which is divided into four parts, is threefold.

Part I. provides for the establishment of County Associations, whose main function is the organisation and administration within the county of the Territorial Force to be raised under the Act. The Associations are to be constituted in accordance with schemes to be made by the Army Council, and they will "have exercise and discharge such powers and duties connected with the organisation and administration of His Majesty's Military forces" as may be assigned or transferred to them by order of His Majesty or by regulations under the Act. S. 2 (2) specifies particular matters in respect of which County Associations may be given powers or duties, and all these matters, with two exceptions only, relate solely to the Territorial Force.

Part II. of the Act authorises the raising of a force, to be called the Territorial Force, consisting of such number of men as may be provided by Parliament, and for the government, training, embodiment, etc., of the

new Force. As respects these matters, the provisions of the Act follow closely the lines of the Militia Act, 1882, but the conditions of training are considerably less stringent than those formerly applicable to the Militia; the terms of engagement, however, in the Territorial Force are much more akin to the Militia terms than to the old Volunteer terms. The Force is to be raised entirely by voluntary enlistment, and the Ballot Acts do not apply to it.

As regards embodiment of the Force, the Act enables all necessary directions to be given for the purpose as soon as a Proclamation has been issued calling out the Reserve, and a separate Proclamation is not necessary, as it was in the case of the Militia; and, further, as soon as the First Class of the Reserve has been called out under any such Proclamation the Territorial Force *must* be embodied within one month, unless Parliament presents an address to the contrary.

S. 29 provides for the transfer to the Territorial Force of existing units of Yeomanry and Volunteers raised in any county for which a County Association is constituted.[1] The Bill for the Act as originally introduced provided also for the transfer of the Militia to the Territorial Force, but under the Act as passed the Militia is dealt with under Part III.

It may be observed that the Act does not repeal the old Militia, Yeomanry, and Volunteer Acts.

Part III. of the Act provides for the formation of a Special Reserve consisting of men who have not served in the Regular Forces;[2] this was impossible under the old law (Reserve Forces Act, 1882, s. 3), which only provided for the enlistment in the Reserve of men who have served in the Regular Army.

Ss. 31 and 32 contain provisions as to extension of service and liability to be called out.

S. 34 deals with existing Militia Battalions by giving power to transfer them by Order in Council to the Special Reserve.[3]

S. 36 enacts that acceptance of a commission in the Reserve of Officers is not to vacate a seat in the House of Commons.

Assay of Imported Watch-Cases (Existing Stocks Exemption) (c. 8, U.K.).—All watch-cases imported into the United Kingdom before June 1, 1907, are by this Act exempted from assay and from the provisions of the Customs Act, 1842 (5 & 6 Vict. c. 47), and the Revenue Act, 1883 (46 & 47 Vict. c. 55).

It appears to have been assumed for many years, both by the Customs Authorities and the Goldsmiths' Company, that watch-cases were not "plate" within the meaning of the above-mentioned Acts. This view, how-

[1] The transfer was effected by Orders in Council of March 19 and April 9, 1908.

[2] The Army (Annual) Act, 1908, s. 4, allows discharged Regulars to be enlisted in the Special Reserve.

[3] The transfer was effected by Order in Council of April 9, 1908.

ever, was rejected by the Court of Appeal in *Goldsmiths' Company* v. *Wyatt* ([1907], 1 K.B. 95), and the Act is apparently intended to protect holders of existing stocks of unassayed foreign watch-cases, who had some justification for their ignorance of the law.

Butter and Margarine (c. 21, U.K.).—This Act is an extension of the Sale of Food and Drugs Acts, and may be cited with those Acts, and deals principally with the conditions of manufacture, sale, etc., of butter, margarine, and "milk-blended" butter.[1]

The chief provisions of the Act are:

(1) The enactments which at present necessitate the registration of margarine factories are applied to premises on which any butter is blended, reworked, or subjected to treatment, or on which milk-blended butter is manufactured or sold wholesale.

(2) Various powers are given to officers of the Board of Agriculture, the Local Government Board, and local authorities to enter and inspect premises registered under the Acts, or suspected premises.

(3) A penalty is imposed in cases where any adulterant is found in a butter factory, and the limit of moisture in butter, margarine, and milk-blended butter, is regulated.

(4) The provisions of s. 1 of the Act of 1899, prohibiting the importation of certain adulterated substances, etc., are applied to butter, margarine, and milk-blended butter containing more than the prescribed limit of moisture or preservatives, and to milk-blended butter not conspicuously marked with its approved name.

(5) Power is given to make regulations with regard to the use of milk-solids in butter, and the use of preservatives in butter, margarine, and milk-blended butter, and a penalty imposed on breach of the regulations.

(6) Margarine must not be described on labels, advertisements, etc., except either as "margarine" or as "margarine" coupled with some fancy name which has been approved by the Board of Agriculture, and which is not "suggestive of butter."

(7) Dealing in milk-blended butter is subjected generally to the same conditions and restrictions as those to which margarine is subject, and is to be described on labels, advertisements, etc., by a name approved by the Board of Agriculture, and the name must not "refer to or be suggestive of butter or anything connected with the dairy interests."

Colonies. (i) *British North America Act* (c. 11, Col.).—This Act deals with the annual grants payable by the Dominion Government of Canada to the several Provinces of the Dominion for their local purposes and the

[1] "Margarine" is defined as "any article of food, whether mixed with butter or not, which resembles butter and is not milk-blended butter," and this definition is substituted for the old definition in the Margarine Act, 1887 (50 & 51 Vict. c. 29, s. 3).

"Milk-blended butter" is described in s. 1 as any mixture produced by mixing or blending butter with milk or cream other than condensed milk or cream.

support of their Government and Legislatures. The amounts of these payments to the various Provinces were originally fixed, as respects the original Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick, by s. 118 of the British North America Act, 1867; as respects British Columbia and Prince Edward's Isle, by Orders in Council of 1871 and 1873 respectively, made under s. 146 of that Act; and as respects Manitoba, Alberta, and Saskatchewan, by Acts of the Parliament of Canada. Imperial legislation being necessary to alter the existing scales of payments, the Dominion Parliament presented an address to His Majesty (which is scheduled to the Act) asking for the necessary legislation, and specifying the new scales of payment, which are to be "a final and unalterable settlement."

The new scales of payment, and certain subsidiary provisions (which are rather complicated), are set out at length in s. 1 of the Act, and are not enacted merely by reference to the terms of the Scheduled Address. It is conceivable that questions may arise as to how far regard may be had to the Schedule for the purpose of construing the enactment contained in s. 1.

(i) *Australian States Constitution* (c. 7, Col.).—This Act simplifies and makes uniform the provisions relating to the reservation of Bills passed by the Legislatures of New South Wales, Victoria, Queensland, South Australia, Western Australia, and Tasmania. It also removes doubts (see s. 2) as to the validity of any Australian Acts which ought to have been, but which may not have been, reserved in the past.

The Bills passed by the Legislature of any Australian State which will require to be reserved hereafter are Bills which either (*a*) alter the constitution of the Legislature of the State; or (*b*) affect the Governor's salary; or (*c*) are required to be reserved by any Act in force in the State or by the Bill itself.

Companies (c. 50, U.K.).—The provisions of this Act are for the most part based on the recommendation of the Departmental Committee appointed in 1905 by Mr. Gerald Balfour, of which originally the present Lord Chancellor and subsequently the late Sir C. W. Warrington was chairman, and which reported in 1906.

The Act, which consists of fifty-two sections and four schedules, deals with a large number of matters of detail of which it is difficult to give any intelligible account within reasonable limits of space, but the main provisions are as follows:

S. 1 requires every company which does not issue a prospectus "on or with reference to its formation" to file a statement in lieu of prospectus in the form in Schedule I.; this form covers all the facts which are required to be disclosed in a prospectus, where one is issued.

S. 9 gives companies under the Companies Act the power usually granted to statutory companies of paying interest not exceeding 4 per cent. out of capital during construction, subject to the sanction of the Board of Trade.

The Bill as it passed the House of Lords also authorised the issue of share capital at a discount, but the provision was struck out in the House of Commons.

S. 10 (which does not apply to companies in Scotland) extends the provisions of the Companies Act, 1900, by making it necessary to register *all* mortgages and charges on property of the company, including those on land (wherever situate) and book debts.

S. 14 removes doubts as to the validity of perpetual debentures or debenture stock.

S. 15 restores what was believed to be the law till the decision in *In re Tasker and Sons, Ltd.* [1905], 2 C. 587, by enabling companies to keep alive for the purpose of reissue debentures which have been redeemed.

S. 16 enables a contract to take debentures to be enforced by specific performance, thus getting rid of the decision in *South African Territories, Ltd.*, v. *Wallington* [1898], A.C. 309.

S. 21 requires companies to file annually a statement in the form of a balance-sheet with a summary of capital, liabilities, and assets, but the balance-sheet need not include a statement of profit and loss.

S. 24 provides a penalty for failure to hold the annual general meeting and empowers the Court to summon a meeting in case of default.

S. 27 (which was inserted in the Bill in the Commons on the proposal of Mr. Rufus Isaacs) finally abolishes the view that a voluntary winding-up is to be regarded as a purely domestic affair of the company's; it requires the liquidator in a voluntary winding-up forthwith to summon a meeting of creditors which will decide whether they want another or an additional liquidator, and enables them to apply to the Court for the purpose.

S. 32 empowers the Court to grant relief on terms to directors who have acted reasonably and honestly.

S. 35 requires a company incorporated outside the United Kingdom which establishes a place of business within it to file with the registrar of companies, a certified copy of the charter, etc., of the company, a list of its directors, and the names and addresses of some one or more person resident in the United Kingdom authorised to accept process on behalf of the company.

The company must also file an annual statement of affairs, such as is required from a company incorporated in this country under s. 21 of the Act, and if it uses the word "Limited" as part of its name it must state the country in which it is incorporated in prospectuses, etc., and at its place of business.

S. 37 contains the important definition of "private company." Private companies are exempted from compliance with (*inter alia*) the provisions of ss. 1 and 21 of the Act. The text of the section is as follows:

"(1) For the purposes of this Act the expression 'private company' means a company which by its articles—

(*a*) restricts the right to transfer its shares; and

(*b*) limits the number of its members (exclusive of persons who are in the employment of the company) to fifty; and

(*c*) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

"(2) A private company may, subject to anything contained in the memorandum or articles, by passing a special resolution and by filing with the registrar such a statement in lieu of prospectus as the company, if a public company, would have had to file before allotting any of its shares or debentures, together with such a statutory declaration as the company, if a public company, would, under the provisions of s. 6 of the Companies Act, 1900, have had to file before commencing business, turn itself into a public company.

"(3) Where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this section, be treated as a single member.

"(4) Wherever in the Companies Acts a minimum of seven members is required only two members shall be required in the case of a private company."

Criminal Law. (i) *Criminal Appeal* (c. 23, E.).—Sir J. Lawson Walton's Criminal Appeal Bill, which passed into law as this Act, differed in some important particulars (viz. as respects the constitution of the Court of Criminal Appeal, in giving no power to order a new trial, and in containing much more detailed provisions as to procedure) from Lord Loreburn's Bill of 1906, as passed by the House of Lords, and was much longer, consisting of twenty-three instead of nine clauses.

S. 1 of the Act provides for the constitution of a new Court, to be a superior Court of record and to be called the Court of Criminal Appeal; the Court is to consist of the Lord Chief Justice of England and eight judges of the King's Bench Division chosen by him with the consent of the Lord Chancellor. The Court (of which the sittings will normally be held in London, and which is to sit in vacation if necessary) is properly constituted for the purpose of any hearing if it consists of not less than three and of an uneven number of judges. The decision of the Court is to be by a majority, and there is to be only one judgment pronounced, unless the Court decide that it would be convenient to have separate judgments on some point of law. The decision of the Court is final unless the Attorney-General certifies that it involves a point of law of exceptional public importance, and that there ought to be a further appeal; there may then be an appeal to the House of Lords.

S. 3 specifies the circumstances in which an appeal may be brought, viz. against conviction, on a pure question of law without any leave, and on a question of fact or of mixed law and fact with the leave of the Court of Criminal Appeal, or of the judge who tried the case, and against sentence with the leave of the Court of Criminal Appeal.

Ss. 4 and 5 deal with the determination of appeals and the powers of the Court in certain special cases. The Court must (subject to the proviso to subs. (1) of s. 4) allow the appeal if they think the verdict of the jury was unreasonable or against the weight of evidence, or that there was a mistake of Law or "that on any ground there was a miscarriage of justice"; to this, however, there is the above-mentioned proviso giving the Court power to dismiss an appeal, even where they think the appellant succeeds on his point, "if they consider that no substantial miscarriage of justice has actually occurred." On an appeal against sentence, the Court may pass a more as well as a less severe sentence.

S. 6 contains provisions suspending to a certain extent the revesting, on conviction, of property, and the operation of restitution orders, and gives the Court power to annul or vary restitution orders.

Ss. 7–18 contain detailed provisions as to the procedure on an appeal, of which the following may be noted: the Court has full powers as to taking fresh evidence, referring matters of inquiry to special commissioners, and appointing assessors to sit with the Court (s. 9); the Court may assign legal assistance to an appellant, and the appellant has an absolute right to be present at the hearing, unless a question of law only is involved (ss. 10 and 11); shorthand notes are to be taken at every trial from conviction at which there may be an appeal (s. 16), and the cost of the notes, and a transcript if there is one, is paid by the central Government; rules of procedure are to be made by the Judges of the Court with the advice of a special committee of experts in criminal procedure (s. 18).

S. 19 saves the Royal prerogative of mercy, but also enables the Home Secretary to refer any case in which there is a petition from a condemned person, or any particular point arising in the case, to the Court of Criminal Appeal.

The Act does not repeal the Crown Cases Act, 1848, and it therefore remains possible for a judge to state a case under that Act, but if a case is so stated it will be considered by the Court of Criminal Appeal s. 20 (4)), and not by the old Court of Crown Cases Reserved.

(ii) *Probation of Offenders* (c. 17, U.K.).—The principal reform effected by this Act is to authorise the adoption of a practice already in use in many parts of America, of releasing on recognisance certain classes of offenders and for the recognisance containing a condition that during a specified time the offender will submit to the supervision of an officer appointed by the Court for the purpose.

Somewhat analogous powers could already at the time the Act was passed be exercised in the case of habitual drunkards and youthful offenders under the Inebriates Act, 1898 (61 & 62 Vict. c. 60), s. 6, and the Youthful Offenders Act, 1901 (1 Edw. 7 c. 20), respectively.

The Act provides for the appointment of "probation officers" whose duty it is to see that the offender conforms with the conditions upon which

he was released and to report to the Court, and offenders who fail to conform with these conditions may be brought before the Court, and, without further trial, sentenced for their original offence.

Destructive Insects and Pests (c. 4, U.K.).—This Act extends the powers possessed by the Board of Agriculture under the Destructive Insects Act 1877 (40 & 41 Vict. c. 68) for preventing the spreading of the Colorado Beetle, to any insect, fungus, or other pest destructive to agricultural or horticultural crops or to trees and bushes.

The result is that the Board have power to make orders prohibiting the importation of infected plants and substances, and for the destruction of diseased crops, and to impose penalties on disobedience to their orders. They may also authorise the payment of compensation by local authorities in certain cases to the owners of the crops ordered to be destroyed.

The Act was specially designed to stop the spread of gooseberry mildew.

Education (Administrative Provisions) (c. 43, E.).—The provisions contained in this Act for the most part originally appeared in Mr. Birrell's ill-fated Bill of 1906. As the title of the Act implies, it is concerned with small amendments of detail designed to ease the working of the educational machinery of England; but perhaps the following points are of sufficient importance to be noticed:

S. 1 gives local authorities additional powers in connection with the acquisition and appropriation of land, especially for the purposes of secondary education.

Ss. 3-9 deal with financial matters, and (*inter alia*) extend the period allowed for repayment of borrowed money, allow county councils to contribute towards any capital expenses incurred by non-county boroughs or urban districts for the purposes of secondary education, and allow the Public Works Loan Commissioners to lend money to local education authorities for those purposes.

S. 13 contains perhaps the provisions of most public interest in the Act. It empowers local education authorities to provide vacation schools, play-centres, etc., and compels them to provide for the medical inspection of school children, with a pious aspiration (in the form of proviso) that voluntary agencies may assist in the work.

Evidence (Colonial Statutes) (c. 16, U.K.).—Apart from statute, colonial law could not formerly be proved by codes, statutes, text-books, etc. A skilled witness had in all cases to be called, who could, however, refresh his memory from such documents (see the Sussex Peerage Case, 1844, 11 C. & F. 114).

The effect of s. 6 of the Colonial Laws Validity Act, 1865 (28 & 29 Vict. c. 63), seems to be that, in the case of colonial statutes, a copy certified by the proper officer to be a true copy may be received in evidence, but theoretically, at all events, it was still necessary to call a witness to produce the certified copy.

Under the new Act government printers' copies of colonial statutes are made evidence. The Act extends to statutes, and to orders, regulations, etc., having statutory force, of all British possessions, and may by Order in Council be made to apply to the statutes of protectorates, including Cyprus.

Forgery of such documents is made an offence punishable by one year's hard labour.

Finance.—(i) *Consolidated Fund* (*No.* 1) (c. 1, U.K.) and *Appropriation* (c. 20, U.K.). These Acts together authorise the issue out of the Consolidated Fund of sums amounting in all to £110,750,129, and give the Treasury power to borrow to that amount temporarily by means of Treasury Bills, and the Appropriation Act appropriates the sums so granted to the specified services and purposes.

The wording of ss. 4 and 5 of the Appropriation Act has been altered from that used in previous Appropriation Acts in order to give the Treasury statutory authority for their practice of allowing excess receipts on any Army or Navy vote to be applied towards the deficits on other votes in the same departments.

(ii) *Finance* (c. 13, U.K.).—This is the annual Budget Act, which makes "provision for the financial arrangements of the year." The Act is divided into seven parts, of which Part I. deals with customs and excise, Part II. with stamps, Part III. with Death Duties, Part IV. with the Local Taxation Account, Part V. with Income-tax, and Part VI. with the National Debt. The following account deals only with the more important provisions of the Act.

Part I. : s. 1 continues the customs duty on tea as from May 14, 1907, to July 1, 1908, at the previous rate.

Ss. 2 and 3 make permanent the additional customs duties on tobacco, beer, and spirits, and the additional excise duties on beer and spirits, originally imposed as annual duties by the Finance Act of 1900. Between 1900 and 1907 these duties were continued from year to year by each successive Finance Act.

Part. II. : s. 7 removes a difficulty in connection with the stamping of hire-purchase agreements, and makes them bear the ordinary 6*d.* agreement stamp, or, if made by deed, the 10*s.* stamp. Previously great difficulty existed in determining how hire-purchase agreements were to be stamped; one such agreement might be so framed as to be exempt from stamp-duty as being an agreement "for or relating to the sale of goods," another might be liable to be stamped as an agreement, another as a bond.

S. 8. Subs. (1) of this section, by a declaratory enactment, removes the doubt as to whether policies by way of advertisement in newspapers against loss of property were included within the term "policy of insurance for any payment agreed to be made by way of indemnity against loss, etc., of property," as used in the Stamp Act, 1891; and subs. (2) extends to these policies the power to compound for stamp-duties on insurance policies. The

effect of these enactments is to put these policies on the same footing as accident policies (*see* ss. 98 (1) and 116 of the Stamp Act, 1891) and sickness policies (*see* s. 13 of the Finance Act, 1895, and s. 13 of Finance Act, 1896).

S. 9 removes the absolute prohibition against stamping proxies after execution so far as respects proxies executed out of the United Kingdom.

S. 10 reduces from 2*s.* 6*d.* to 6*d.* per cent. the duty payable in the case of the conversion or consolidation of loan capital on which duty is paid under s. 8 of the Finance Act, 1899.

Part III.: S. 12 substitutes the scale in the Schedule I. of the Act for the scale of rates of estate duty contained in s. 17 of the Finance Act, 1894. The new scale (which took effect as respects all persons dying on or after April 19, 1907—the day following the Budget statement) is the same as the old scale till the estate exceeds £150,000; as respects estates between £150,000 and £1,000,000 the new rate increases by steps of £1 instead of 10*s.*, and the old step between £500,000 and £1,000,000 is divided into two. Under the old scale estates above £1,000,000, whatever the amount, paid 8 per cent., while under the new scale they will pay 10 per cent. on the first million, and the excess over one million will be charged as follows, namely, at 10 per cent. plus 1 per cent. for each £500,000 or part of £500,000 up to a maximum charge of 15 per cent. which is reached when the estate exceeds £3,000,000.

A proviso to the section (following s. 21 (3) of the Finance Act, 1894, and s. 12 (1) of the Finance Act, 1900) protects persons who have bought or advanced money on reversions from being prejudiced by the increase of duties under the section.

Part IV. of the Act consists of one section only dealing with payments to the Local Taxation Accounts of England, Scotland, and Ireland. Before the Act certain grants payable out of the proceeds of estate duty, and the proceeds of certain duties known as the Local Taxation (Customs and Excise) Duties (duties on spirits and beer, the proceeds of which are commonly known as "the whisky money") and the proceeds of the Local Taxation Licences Duties (*e.g.* duties on public-house licences, dog licences, gun and game licences), were paid direct into the Local Taxation Accounts; under the Act there will no longer be any interception of special revenue, but the local taxation accounts will receive direct from the Consolidated Funds equivalent amounts. The section (which took effect as from April 1, 1907) does not in any way affect the distribution as between local authorities of the grants and sums with which the Act deals, but merely emphasises the control of the Chancellor of the Exchequer over the duties in question.

Part V. deals with Income-tax.

S. 18 reimposes the Income-tax at the rate of one shilling for the year 1907-8.

S. 19 gives effect to the Report of the Select Committee of the House of Commons which sat in 1906 and reported in favour of the practicability

of differentiating for the purposes of income-tax between earned and unearned income. Under the section any person whose *total* income does not exceed £2,000 pays income-tax at the rate of 9*d.* only on so much of the income as is "earned income," a term defined in subs. (7).

Ss. 20-28 make various amendments, mostly of a very technical character, in the Income-tax Acts. Of these amendments those of most general interest are perhaps that contained in s. 22, which requires every person who receives the familiar buff paper to make a return of his income under Sch. D or Sch. E, *whether he is or is not chargeable with duty*, whereas previously the return was not required in the case of a person not chargeable; and that contained in s. 22, which deals with deductions for wear and tear of machinery and plant.

It may be noticed that ss. 21 to 26 give effect to various suggestions made by the Departmental Committee on Income-tax, of which the late Lord Ritchie was chairman, which reported in 1905 [1905, Cd. 2575].

(iii) *Isle of Man* (*Customs*) (c. 26).—This Act continues for a year certain additional duties on tea, tobacco, spirits, and beer, imported into the Isle of Man.

(iv) *Public Works Loans* (c. 36, U.K.).—S. 1 authorises the issue of £3,700,000 for loans for public works. S. 3 is a statutory transfer to the Secretary of State for War of all the mortgages held by the Public Works Loan Commissioners on the lands belonging, and parliamentary grants payable, to volunteer corps. S. 4 provides for a loan to Jamaica of a sum not exceeding £800,000 to repair the earthquake damage, and s. 5 for a loan to Southern Nigeria of a sum not exceeding £2,000,000 for railway construction.

(v) *Transvaal Loan* (*Guarantee*) (c. 37, U.K.) gives the Treasury power to guarantee a loan by the Transvaal not exceeding an amount of stock sufficient to raise £5,000,000, or stock of nominal amount of £5,000,000, whichever is least.

(vi) *Telegraph* (*Money*) (c. 6, U.K.).—This Act enables the Treasury to issue out of the Consolidated Fund sums not exceeding £6,000,000 for the development of the Post Office telephonic system.

India. *Council of India* (c. 35, U.K.).—This Act effects certain reforms with respect to the Council of India, viz.:

(1) The number of members is fixed at a maximum of fourteen and a minimum of ten;[1]

(2) A member of the Council must not have left India more than five years (instead of ten years) before appointment;

(3) The salary of members is reduced from £1,200 to £1,000.

(4) The term of office of future members is reduced from ten years to seven years.

[1] Previously the number was fixed at fifteen, but the Secretary of State had power by not filling up vacancies to reduce the number to ten, and had in fact, by exercising this power, reduced the number to twelve.

Industrial. (i) *Factories and Workshops* (c. 39, U.K.).—The principal innovations made by this Act are:

(1) Ss. 1–4, which deal with employment in laundries. The provisions of the Factory Act, 1901 (1 Edw. 7 c. 22) are by s. 1 applied to laundries as though laundries were "non-textile factories" within the meaning of that Act, but a special provision is inserted (s. 2) with respect to the hours of employment of women. S. 3 prescribes special regulations in laundries as to the provision of fans, the manner of using stoves and heating irons, and the condition of the floors.

(2) S. 5 which deals with the employment of labour in "charitable and reformatory" institutions which would not otherwise be liable to the provisions of the Factory Act, 1901, owing to their not being carried on for purposes of gain. That Act is applied to all such institutions in which articles are "made, altered, repaired, ornamented, finished, washed, cleaned, or adapted for sale"; power is, however, given to the Home Secretary in certain cases to direct that the Act shall apply only subject to modifications, the chief of which are that the managers may submit a scheme of hours of employment, etc., which, if approved by the Home Secretary and not annulled by Parliament, will take the place of the provisions of the Act,[1] and that (in the case of reformatory institutions) the managers will have power, unless the Home Secretary interferes, to prevent any inmate from being examined by an inspector except in the presence of one of the managers or the person in charge of the institution.

(ii) *Employment of Women* (c. 10, U.K.).—This Act was passed in order to make possible the ratification of the Berne Convention of 1906, by which the contracting States undertook to prohibit the employment of women at night for a period of at least eleven consecutive hours. It repeals the only two statutory provisions of the English law by which such employment was permitted, viz. the provisions on the subject in the Coal Mines Regulation Act, 1887, and the Factory and Workshop Act, 1901, as to the employment of women in mines and flax scutch mills respectively.

(ii) *Employers' Liability Insurance Companies* (c. 46, U.K.).—The necessity of this Act arose largely from the great increase of employers' liability insurance consequent on the passing of the Workmen's Compensation Act, 1906 (6 Edw. 7 c. 58).

The Act applies to all companies carrying on the business of insuring employers against liability to pay compensation or damages to workmen in their employment (subject to such necessary modifications and adaptations as may be made by Order in Council) the provisions of the Life Assurance Acts, 1870 to 1872, the chief of which relate to the payment of a deposit of £20,000 into Court before any business can be carried on, the keeping of separate accounts and funds, the making of annual reports to the Board

[1] The scheme must, however, not be less favourable to employees than the corresponding provisions of the Act.

of Trade, and compulsory periodical actuarial investigations and valuations. The Acts also contain provisions for notices of proposed amalgamations or transfers being given to policy-holders.

Companies which commenced carrying on business before the Act was passed are exempt from the provisions as to deposits, and an entire exemption from the provisions of the Act is given in the following cases :

(1) Companies who carry on their business as incidental to the business of marine insurance by issuing marine policies covering employers' liability as well as marine adventure.

(2) Associations of employers who satisfy the Board of Trade that they are carrying on business wholly and mainly for the purpose of mutual insurance.

(3) Members of Lloyd's and other associations of underwriters approved by the Board of Trade, who comply with certain requirements set out in the schedule to the Act.

Injured Animals (c. 5, U.K.).*—This Act re-enacts with amendments the Injured Animals Act, 1894 (57 & 58 Vict. c. 22). The Act of 1894 enabled police constables to slaughter, or cause to be slaughtered, any horse, mule, or ass so severely injured that it could not, without cruelty, be led away. The new Act preserves the old law, but also extends it to cattle, sheep, goats, and pigs, and to cases where the animal is so diseased or in such a physical condition that it cannot be removed without cruelty, and also gives power to remove the carcase of the slaughtered animal.

Irish Tobacco (c. 3, I.).*—This Act repeals the Tobacco Cultivation Act, 1831, and all other Acts, so far as they prohibit the planting of tobacco in Ireland. The repeal, however, is only to take effect as from a date to be fixed by Order in Council, after Parliament has imposed an excise duty on Irish-grown tobacco.[1]

Except for an interval between 1799 and 1831, the planting of tobacco has been prohibited in Ireland since 1660 (see 12 Chas. II. c. 34, and 15 Chas. II. c. 7), the prohibition having been, as the preambles of the Acts of Charles II. expressly state, imposed in the interests of "the Colonies and plantations of this Kingdome in America." (See *The Times* for November 2, 1908, for an interesting article on the history of tobacco-growing in Ireland.)

Lights on Vehicles (c. 45, E. and I.).*—Before the passing of this Act the lights to be carried on vehicles at night were regulated by by-laws under the Local Government Act, 1888, the Municipal Corporation Act, 1882, and also by various local and personal acts.

This Act makes statutory provisions which will apply to the whole of England, Wales, and Ireland with respect to the lights to be carried.

S. 1 provides that every vehicle, between one hour after sunset and one

[1] S. 3 of the Finance Act, 1908, imposes an excise duty and makes the repeal take effect as from 1st January, 1909.

hour before sunrise, is to carry at least one effective light on the off or right side of the vehicle. If any light is carried which is visible from the rear the light must be a red light, and a light visible from the rear is compulsory in the case of any vehicle carrying loads projecting more than six feet to the rear. By s. 2 a penalty not exceeding forty shillings, or for subsequent offences £5, is imposed for a breach of these provisions.

The Act provides for certain exemptions, namely:

(1) Bicycles, motors, and other road locomotives which independently are under a statutory obligation to carry lights.

(2) Vehicles drawn or propelled by hand.

(3) Such vehicles in the public service as may be exempted by Order in Council in the interests of the naval or military services.

(4) Borough Councils may, with the consent of the Home Secretary, exempt certain vehicles carrying inflammable goods.

(5) County Councils may exempt certain vehicles engaged in harvesting operations.

With these exceptions, however, the Act applies to all vehicles and any machine or implement drawn by animal traction.

All existing by-laws on the subject are repealed, but power is given for local authorities to make by-laws imposing on vehicles in their district additional obligations with respect to carrying lights.

London Cabs and Stage Carriages (c. 55, E.).—This Act effects certain reforms in the management of public vehicles mostly necessitated by the growth of motor traffic, but applies only to London, *i.e.* to the Metropolitan Police District and the City.

S. 1 enables the Home Secretary to fix the fares to be paid for taximeter cabs, either on the basis of time or distance, or on the basis of a combination of time and distance, with a minimum fare of sixpence;

s. 2 (which remains in force only till the end of 1909) practically abolishes the system of "privileged" cabs at railway stations;

s. 3 enables the Home Secretary to apply the provisions of the Acts relating to stage carriages[1] in London (which will include all provisions as to licences, etc.) to stage carriages which on every journey go to or from places outside London, which carriages were, before the passing of the Act, exempt from these provisions;

s. 4 enables the Commissioner of Police to regulate the stopping-places for omnibuses and tramcars; and

s. 5 applies s. 48 of the Tramways Act, 1870 (33 & 34 Vict. c. 78), which confers power on local authorities to make regulations as to licences, etc., for carriages on *tramways*, and which formerly applied only to tramways under the Tramways Acts, to cars run on lines which, though in their nature tramways, were constructed as light railways, under the Light Railways Act, 1896 (59 & 60 Vict. c. 43).

[1] *i.e.* omnibuses and tramcars.

Marriage. (i) *Matrimonial Causes* (c. 12, E.).—This Act makes certain small amendments in the practice of the Divorce Court in relation to maintenance.

1. It extends to decrees of nullity of marriage the power given in case of decrees for dissolution by s. 32 of the Matrimonial Causes Act, 1857, and s. 1 of the Matrimonial Causes Act, 1866, under which payments, either by way of lump sums or by way of monthly or weekly sums, may be ordered to be made by the husband to the wife on a decree for dissolution; previously there was no such *statutory* power in case of decrees of nullity.

2. It gives power to make an order for payment of a monthly or weekly sum in addition to, as well as instead of, an order for a lump sum, and, in any case where the husband's means increase, to make an order increasing any amount payable monthly or weekly (s. 1).

S. 2 repeals the above-mentioned sections of the Acts of 1857 and 1866, which are re-enacted in s. 1.

3. S. 3 gives the Court power to allow persons to intervene on terms in suits for dissolution.[1]

(ii) *Deceased Wife's Sister* (c. 47, U.K).*—S. 1 provides that marriages with a deceased wife's sister (which includes a sister of the half blood: s. 5) wherever contracted are not to be, or to be deemed to have been, void or voidable *as a civil contract.*

There are three provisos to the section, of which the first saves persons in Anglican orders from civil or ecclesiastical liability for acts or omissions to which they would not have been liable if the Act had not passed, and the second enables an incumbent who has refused to celebrate such a marriage in his church to permit another clergyman to celebrate it.

S. 2 saves existing rights and interests from being prejudiced by the validation of marriages contracted before the passing of the Act.

S. 3. Notwithstanding the Act, adultery with a wife's sister continues to constitute a ground of divorce for the wife, and in case of divorce the husband cannot marry the wife's sister during the lifetime of the wife.

Merchant Shipping (c. 52, U.K.).—To ascertain the register tonnage of a ship certain deductions are made from the gross tonnage, under s. 78 of the Merchant Shipping Act, 1894, on account of propelling space, and under s. 79 on account of crew-space and certain other matters.

The effect of this Act is to limit the deduction which can be made under s. 78 of the Act of 1894 to 55 per cent. of the tonnage which remains after deducting from the gross tonnage the deductions allowed under s. 79.

[1] It is hoped that the account given above of the effect of this Act is accurate. Mr. Justice Bargrave Deane, however, appears to have found difficulty in discovering what the Act really does (see *Sharpe* (otherwise *Morgan*) v. *Sharpe*, *The Times*, December 2, 1908, in which he is reported to have said that "this Act seems to have jumbled together all the provisions of the Matrimonial Causes Acts"). Perhaps the Lord Chancellor and the ex-Lord Chancellor, who were the sponsors of the Bill for the Act, and Lord Gorell, who is believed to have been its draftsman, might enlighten him.

Partnerships. *Limited Partnerships* (c. 24, U.K.).*—This Act authorises the creation of limited partnerships. Such partnerships, corresponding to the *société en commandite* of foreign law, have long been known in the United States; but although the question of the legalisation of limited partnerships arose in this country soon after the decision in *Cox* v. *Hickman* (1860), and a Bill for the purpose was introduced as early as 1862, and again in many subsequent years, it has taken nearly half a century of agitation to procure the necessary parliamentary sanction. It remains to be seen how far use will be made of the Act now that the Companies Act (*see above*) has recognised and given special treatment to the "private company."

The Bill for the Act was considerably modified in its passage through Parliament, and in particular (owing to the opposition of the bankers) the provision enabling a person to become a limited partner by undertaking to contribute, instead of by actually contributing, capital, was struck out.

The Act, which is somewhat inaccurately called "an Act to *establish* Limited Partnerships," consists of seventeen sections, and its principal provisions are as follows:

A limited partnership will be subject to the ordinary law of partnership except so far as the Act provides to the contrary (s. 7), and must consist of at least one "general partner" whose liability for the firm obligations is the same as that of a partner in an ordinary firm, and one "limited partner" whose liability only extends to the capital brought by him into the firm at the time he enters it, and who is precluded, under pain of becoming *pro tanto* a general partner, from withdrawing any part of that capital during the continuance of the partnership (s. 4).

Every limited partnership must be registered, and in default the limited partners will become general partners (s. 5); the manner and particulars required to be stated on registration (among which are the terms of the partnership and the capital contributed by each limited partner) are provided for by s. 8, and s. 9 requires registration (under a continuing daily penalty of £1) of any change in the registered particulars; under s. 16 any person has a right, on payment of a fee, to inspect the statements registered under the Act, and s. 17 gives power to make rules as to registration under the Act.

The important provisions as to the modification of the general law in case of limited partnerships are contained in s. 6, and are as follows:

Subs. (1). A limited partner may inspect the firm's books, examine into the state of the partnership business, and advise with the partners thereon, but otherwise may take no part in the business and cannot bind the firm; to take part in the business involves unlimited liability for all obligations of the firm incurred during the time of the contravention.

Subs. (2). Death or bankruptcy does not dissolve the partnership, and lunacy does not necessarily give the Court power to dissolve.

Subss. (3) and (4). On a dissolution, the general partners wind up the

firm's affairs, unless the Court otherwise orders, and applications to the Court to wind up are to be under the Companies Acts, subject to modifications made by Rules.

Subs. (5), which only operates in default of agreement express or implied, *inter alia* allows a limited partner, with the consent of the general partners, to assign his share, and a person to be introduced as partner, without the consent of the limited partners.

Patents and Designs. (i) *Patents and Designs* (*Amendment*) (c. 28, U.K.).—This Act was repealed as soon as it came into force by the Consolidation Act (*vid. infra*), in which all of its provisions are incorporated. It contains numerous amendments of the Patents and Designs Acts, many of which relate to procedure and are of so technical a character that it is not possible to state their effect intelligibly within the scope of this article.

Part I. deals with patents. The most important innovations which it effects are:

S. 1, which deals with the granting of patents to two or more persons.

S. 4, by which, if an applicant deposits several provisional specifications which are cognate, or modifications one of another, the Comptroller may grant a single patent in respect of all the applications.

S. 5, which legalises the grant of "patents of addition" for improvements in existing patents for the same term as the term of the original patent (thereby rendering possible a saving of renewal fees).

S. 9, which provides that a patent is not to be held invalid on the ground of disconformity.

S. 14, which enables any persons who would have been entitled to *oppose* the grant of a patent, within two years from the date of the patent to obtain an order *revoking* the patent on any grounds on which the grant of the patent might have been opposed.

S. 15, which provides for the revocation of patents on the ground that the patented article is manufactured exclusively or mainly outside the United Kingdom.

S. 25, which invalidates contracts for the sale of, or licences to use patented articles containing conditions the effect of which is to prohibit the purchaser or licensee from using any article or class of articles supplied or owned by any person other than the seller or licensor, or to require the purchaser or licensee to acquire from the seller or licensor any article or class of articles not protected by the patent.

This part also contains other provisions for the simplification of procedure, and provisions relating to chemical inventions (s. 3), official investigations (s. 6), grounds of opposition (s. 10), the transfer of the jurisdiction of the Privy Council on petitions for the grant of compulsory licences to Court (s. 16), the application of the provisions of the Patents Acts as to secret patents to the Admiralty as well as the War Office (s. 21), anticipation

(s. 22), the restoration of lapsed patents (s. 23), and the exemption of "innocent infringers" from liability for damages (s. 27).

Part II. deals with designs and contains (besides provisions as to the procedure on the application for the registration of designs, etc.) provisions as to the extension of the five years' period of copyright for a further period of five years, or in some cases ten years (s. 31), for the cancellation of the registration of the designs used wholly or mainly abroad (corresponding to the similar provision, noted above, relating to patents) (s. 35), and applying the provisions of the Patents Acts as to certificates of validity and remedy in the case of groundless threat of legal proceedings to designs (s. 37).

Part III. contains provisions for general purposes, including the establishment of branch offices for designs at Manchester and elsewhere, and the imposition of a penalty on the misuse of the words "Patent Office." Other sections in this part deal with rectification of registers (s. 40), "excluded days" (s. 42), the misuse of the word "Registered" (s. 43), and of the Royal Arms (s. 44), the giving of evidence before the Comptroller by statutory declaration (s. 45), and patent agents (s. 48).

(ii) *Patents and Designs* (c. 29, U.K.).—This Act is a consolidation of all the previously existing Acts dealing with patents and designs, including the Patents and Designs (Amendment) Act of the same year (*vide supra*), all of which are repealed.[1]

Public Health. (i) *Public Health* (*Regulations as to Food*) (c. 32, U.K.).—Before this Act was passed the only powers outside the Sale of Food and Drugs Act for dealing with unsound food were conferred by ss. 116-19 of the Public Health Act, 1875, and s. 28 of the Public Health Acts Amendment Act, 1890, which were insufficient to enable food-stuffs coming from abroad to be examined and dealt with at the port of their arrival.

This Act enables the Local Government Board to make regulations authorising measures to be taken for the prevention of danger to public health from the importation, preparation, storage, and distribution of articles of food or drink intended for sale for human consumption (including such measures as examination and taking samples), and applying, as respects any matters dealt with by the regulations, any provisions of any Act of Parliament dealing with the like matters.

The Act applies the provisions as to Local Government Board regulations, under the Public Health Act, 1896 (59 & 60 Vict. c. 19), to regulations under the Act. This enables the Local Government Board to impose a penalty not exceeding £100 for breaches of their regulations, and to provide that the regulations may be enforced and executed by officers of customs.

(ii) *Vaccination* (c. 31, E.).—Under the Vaccination Act, 1898 (61 & 62 Vict. c. 49), in order to obtain exemption from the penalties on the non-

[1] The Patents and Designs Act, 1908 (8 Edw. 7 c. 4), which removes an ambiguity in s. 92 of this Act with respect to the finality of a judge's decision on a petition for revocation of a patent under s. 25, should be noted.

vaccination of infants on the ground of conscientious objection, it was necessary that the objector should obtain a certificate from two justices, or a stipendiary, of his conscientious objection. Under the new Act it is sufficient if within four months of the birth of the child the parent or other person responsible for the vaccination of the child, makes a statutory declaration that he conscientiously believes that vaccination would be prejudicial to the child's health, and within seven days thereafter sends the declaration to the vaccination officer of the district.

(iii) *Vaccination* (c. 49, S.).—This Act is the Scotch version of the English Vaccination Act (*vide supra*). It enables parents in Scotland to obtain exemption from the penalties for not having their children vaccinated by making a statutory declaration of conscientious objection.

(iv) *Notification of Births* (c. 40, U.K).*—This Act, which is not a registration enactment (para. (4) of s. 1), but aimed at diminishing infant mortality, makes it the duty of the father of a child and of persons in attendance on the mother, to give notice of its birth within thirty-six hours of the birth to the District Medical Officer of Health. The provisions of the Act apply to still-born children, and failure to comply with the Act involves a penalty not exceeding 20*s*.

This Act only takes effect in the areas of Local Authorities (County, Borough, or District Councils) by whom it is adopted, or in which it is declared to be in force by an order of the Local Government Board (ss. 2 and 3).

(v) *Public Health Acts Amendment* (c. 50, E. and I.).*—This Act contains 94 sections containing detailed provisions as to (1) streets and buildings, (2) sanitary matters, (3) infectious diseases, (4) common lodging-houses, (5) recreation grounds, (6) police, (7) fire brigades, (8) sky signs, and (9) bathing places, pleasure-boats, etc. These provisions are in separate Parts, and the several Parts only extend to the urban or rural districts to which they are applied by an order of the Local Government Board or (in case of the Parts relating to police, fire brigades, and sky signs) of the Home Secretary.

Released Persons (Poor Law Relief) (c. 14, E.).—This Act deals with the question of what Union is to be liable for the relief of persons in need of relief who are discharged from prisons, reformatory and industrial schools, and inebriate reformatories.

Formerly where the place of settlement of such persons could not be ascertained, they had to be sent to the workhouse of the Union in which the prison, etc., was, and an unfair burden was thereby imposed on the rates of that Union. By this Act (which follows the precedent of the Criminal Lunatics Act, 1884, 47 & 48 Vict. c. 64, s. 8) the Union *prima facie* liable for their maintenance is the Union in which the discharged person ordinarily resided when the offence for which he was serving his time was committed; if this cannot be ascertained the Union in which the offence was committed is liable.

Small Holdings and Allotments (c. 54, E.).—This Act marks an important advance in the legislation on these subjects.[1]

(1) As regards small holdings, the Act provides for the appointment of Small Holdings Commissioners, to be paid out of the public funds, whose duty it is, in co-operation with local authorities, to ascertain the extent to which there is a demand for small holdings in each county, and the extent to which the demand can be satisfied, and to report to the Board of Agriculture. It thereupon becomes the duty of County Councils to prepare schemes for carrying into effect the recommendations of the Commissioners. These schemes are sent to the Board, who may confirm or annul them, and if they are confirmed a duty is cast upon the County Councils to carry them into effect. If any Council refuses to make a scheme the Commissioners may make a scheme for them, and if a Council fails to carry into effect a scheme when made the Board may direct the Commissioners to carry it into effect at the expense of the Council in default (ss. 1-5).

The Act also makes various amendments of the Small Holdings Act, 1892, principally to carry out the recommendations of Lord Onslow's Committee (1906) on the subject. The most important is that County Councils are enabled to acquire land compulsorily for small holdings by purchase or lease (*vide infra*), and, amongst other minor amendments, power is given to County Councils to delegate their powers to Borough or Urban District Councils (ss. 6-15).

The Board of Agriculture is given the power of establishing experimental small holdings in any locality "with a view to demonstrating the feasibility of the establishment of small holdings," and also the important right of repaying the whole or any part of the expenses (other than purchase-money, rent, or compensation) incurred by a Council in proceedings relating to the acquisition of land for small holdings (ss. 16 and 17).

(2) With regard to allotments, the principal amendments of the law are:

(i) The Board of Agriculture is substituted for the Local Government Board as the department interested in allotments.

(ii) The powers of Rural District Councils under the Allotments Acts are transferred to Parish Councils, the result of which is that hereafter the allotment authority will be—in boroughs, the Borough Council; in urban districts, the Urban District Council; and elsewhere, the Parish Council.

(iii) The maximum extent of any one allotment is increased from one acre to five acres, and dwelling-houses may be erected on allotments.

(iv) A duty is cast upon County Councils to ascertain the demands for allotments in their county.

[1] This legislation is now consolidated by the Small Holdings and Allotments Act, 1908 (8 Ed. 7 c. 36), by which all the existing enactments in the subject, including this Act, are repealed.

(3) With regard to the compulsory acquisition of land, whether for small holdings or allotments, the procedure is for the Council which wishes to acquire the land to submit to the Board an order for the compulsory purchase or hiring of the land, and the order, if confirmed by the Board after due publication and inquiry, has statutory force. The Lands Clauses Acts are applied, but a single arbitrator is to decide all questions of disputed compensation, and he may disallow costs unnecessarily incurred and is not to add anything to the compensation on account of the purchase being compulsory. Counsel and expert witnesses are only to be heard at inquiries in exceptional cases by leave of the Board. Certain restrictions are imposed on the compulsory acquisition of pleasure-grounds, statutory undertakings, land in undue quantities, etc. (ss. 26 and 30 and Schedule III.).

(4) Among the supplemental provisions are provisions as to the establishment of a Small Holdings and Allotments Committee of County Councils, separate small holdings and allotments accounts, the promotion and assistance of co-operative societies, etc.

Women. (i) *Married Women's Property* (c. 18, E. & I.).*—S. 1 gets rid of the inconvenient construction put on s. 18 of the Married Women's Property Act, 1882, in the case of *In re Harkness and Allsopp's Contract*, [1896] 2 Ch. 358, in which it was held that a married woman trustee could not convey real estate as a *feme sole*. Under the new enactment a married woman is put exactly in the position of a *feme sole*, as regards disposition of trust estates.

S. 2 enacts that a settlement, or agreement for a settlement, by a husband or intended husband respecting the property of the wife or intended wife, is not to be valid unless executed by her if she is of full age, or confirmed by her after attaining that age if she is an infant, and thus overrules the law as laid down in *Buckland* v. *Buckland*, [1900] 2 Ch. 534, and cases there cited, where it was decided that by virtue of s. 19 of the Act of 1882, the husband *alone* could, by settlement, bind any property of the wife to which he would have been entitled by marital right before the Act of 1882.

S. 3 removes the doubt which had existed whether a married woman alone could be protector of a settlement in respect of a life estate which was her separate property under the Act of 1882.

(ii) *Qualification of Women* (*County and Borough Councils*) (c. 33, E).—This Act provides that a woman is not to be disqualified by sex or marriage from being a county or borough councillor or alderman.

The Act (as passed, though not as it left the House of Lords) allows women to be chairmen of county councils or mayors, but provides that they are not to be ex-officio justices.

It must be observed that the Act (except in its application to London) is much more limited in operation than would at first sight appear. A woman will, notwithstanding the Act, be ineligible for election, if she is not a person qualified to vote at the election, and the consequence of

this is that *married* women will remain altogether ineligible, and *all* women who own but do not occupy land will be in the same position.

(iii) *Qualification of Women* (*County and Town Councils*) (*Scotland*) (c. 48, S.).—This Act makes corresponding provisions as to the removal of women's disqualification in the case of Scottish Local Councils.

(iv) *Employment of Women.* See above under **Industrial.**

2. CHANNEL ISLANDS: JERSEY.

[*Contributed by* E. T. Nicolle, Esq.]

Trading Stamps.—An Order-in-Council of February 11, 1907, confirmed an Act passed by the States on July 9, 1906, on Trading Stamps.

Art. I. defines trading stamps as being any receipt, coupon, note, stamp, or other document distributed by a tradesman in Jersey, or by his agent, to a customer in order to secure to the latter either a premium, an advantage, or a reduction on the price of goods, payable by a third party either in money or merchandise.

Art. II. provides that any person, either as principal or agent, who directly or indirectly traffics in trading stamps in Jersey, commits a misdemeanour, and is liable for each infraction to a fine not exceeding £50, or, in default of payment, to an imprisonment not exceeding three months.

Art. III. provides that the Law should come into force six months after its confirmation by the King in Council.

Free Education.—A Law passed by the States of Jersey on April 25, 1907, provided that as from February 1, 1908, elementary education, which had previously been obligatory, should be free.

II. BRITISH INDIA.

[*Contributed by* Sir Courtenay Ilbert, K.C.B., K.C.S.I.]

1. ACTS OF GOVERNOR-GENERAL IN COUNCIL.

Acts passed—6.

Presidency Banks.—The Presidency Banks (Amendment) Act, 1906 (No. 1), slightly extends the powers of the Presidency Banks with respect to investments. The conferment on those banks of a power to borrow in London had at one time been contemplated, but was ultimately not given. The Act is a good illustration of the technical form in which Indian

Acts are often drawn. It makes specific verbal additions to, or substitutions in, the Act of 1876, which it amends. This form of legislation is probably convenient to those who have to administer the Act, but it is not so convenient for those who have to consider and criticise the proposals of the Bill when before the Legislature.

Steam Boiler.—The Central Provinces Steam Boiler Inspection Act, 1907 (No. 2), follows the lines of Acts which have been passed for Bombay and other Indian Provinces. It had to be passed by the Governor-General's Council because the Central Provinces have no legislature of their own.

Insolvency.—The Provincial Insolvency Act, 1907 (No. 3), does not apply to the Presidency Towns or Rangoon, where insolvency is still dealt with under an English Act of 1848 (11 & 12 Vict. c. 21), but supersedes the insolvency chapter of the Civil Procedure Code which previously regulated insolvency proceedings outside those towns, which had not been altered since 1879, and which was described by the late Lord Hobhouse, when legal member, as a germ, and nothing more than a germ, of an Insolvency Law. The task of amending and recasting the Civil Procedure Code as a whole has for many years past occupied the time of the Indian Legislature. The insolvency chapter was revised by a select committee of the Governor-General's Council, and in its revised form received the general approval of the judicial authorities in India. It has now been taken out of the Code and made the subject of a separate Act. So far as one can judge, the new Act seems to be a cautious and useful adaptation of the provisions and principles of the English bankruptcy law to Indian conditions. Acts of bankruptcy are much the same as in English law. Proceedings may be initiated either by the debtor or by a creditor: if by the debtor his debts must amount to 500 rupees, or he must have been arrested or imprisoned, or his property must be attached, under a decree for payment of money; if by a creditor, there must have been an act of insolvency within three months and the aggregate debts must amount to 500 rupees. A discharge clears, not from all debts, but only from those which have been scheduled. Local governments have power to appoint official receivers and to exempt backward districts from certain provisions of the Act. High Courts have power to make rules for carrying out the Act and to delegate to official receivers certain powers of the local insolvency Courts.

Seditious Meetings.—The Prevention of Seditious Meetings Act, 1907 (No. 6), is a measure of very different character from that just referred to. It supersedes and re-enacts, with modifications, and in a more permanent form, the provisions of the temporary Ordinance which had been passed in an earlier part of the year, and the operation of which was limited to six months. The Act extends to the whole of British India, but has operation only in the provinces to which the Government of India apply it by notification in *The Gazette of India*. It empowers the Local Government

to notify "proclaimed areas," a phrase not unknown to legislation for Ireland. In a "proclaimed area" no public meeting for the furtherance or discussion of any subject likely to cause disturbance or public excitement, or of any political subject, or for the exhibition or distribution of any writing or printed matter relating to any such subject is to be held unless:

(*a*) Written notice of the intention to hold the meeting and of its time and place has been given to the district superintendent or commissioner of police three days previously; or

(*b*) permission to hold the meeting has been obtained in writing from the district superintendent or commissioner of police.

Any officer of police not below the rank of an inspector may, by order in writing, depute one or more police-officers or other persons to attend any such meeting for the purpose of causing a report to be taken of the proceedings.

"Public meeting" is defined to mean a meeting which is open to the public or any class or portion of the public. A meeting may be a public meeting notwithstanding that it is held in a private place and notwithstanding that admission is restricted by ticket or otherwise. A meeting of more than twenty persons is presumed to be a public meeting unless the contrary is proved. There are, however, exemptions from the Act for public meetings held under any statutory or other express legal authority, or convened by the sheriff, or exempted by order of the Local Government.

The district magistrate, or commissioner of police, may by order in writing prohibit a public meeting in a proclaimed area if, in his opinion, it is likely to promote sedition or disaffection, or to cause a disturbance of the public tranquillity. A public meeting so prohibited is to be deemed an unlawful assembly.

There are penalties of fine and imprisonment for being concerned in the promotion or conduct of a public meeting held in a proclaimed area in contravention of the Act, and for delivering in a public place within a proclaimed area any lecture, address, or speech, on any subject likely to cause disturbance or public excitement, or on any political subject. The duration of the Act is limited to three years from November 1, 1907.

Acts Nos. 4 and 5 are of no general interest.

2. MADRAS.

Acts passed—4.

The Madras Legislature has passed Acts about Motor Vehicles (No. 1); Hill Municipalities (No. 2): and Madras City police and municipal affairs (Nos. 3 and 4); but none of them are of any general interest.

3. BOMBAY.

Acts passed—3.

Evidence.—Section 92 of the Indian Evidence Act, 1872, prohibits, subject to certain exceptions, the admission of oral evidence for the purpose of contradicting, varying, adding to, or subtracting from, the terms of a written instrument. For some time the Indian Courts were in the habit of relaxing, or getting round, the provisions of this section for the purpose of giving effect to the principles observed by English courts of equity in determining whether a transaction should be treated as a sale or as a mortgage; but the decision in a well-known case before the Judicial Committee of the Privy Council (*Balkishen Das* v. *Legge*) compelled the Courts to take a stricter view. In a case which came before the Bombay High Court in 1906, the Chief Justice (Sir L. Jenkins) and another judge of that Court remarked on the frequency of the complaint that agriculturists are entrapped into the execution of documents of sale in the belief that the right to redeem still remains with them, and expressed a hope for early legislation which would enable the Courts, at least where an agriculturist is concerned, to investigate and determine the real nature of the transaction, unfettered by s. 92 of the Evidence Act, and to award such relief as the justice of the case may require. The object of the main section of the Dekkhan Agriculturists' Relief (Amendment) Act, 1907 (No. 2), is to give effect to this expression of hope. It applies only to proceedings to which an agriculturist is a party, and in such proceedings empowers the Court to inquire into and determine the real nature of the transaction, notwithstanding the provisions of s. 82 of the Evidence Act, and to give relief accordingly. Legislation of this kind, limited in its scope to a particular area and a particular class of transactions, is open to obvious objections. The proper course would have been to amend the general Evidence Act, but this would probably have involved much delay, and the case for legislation in the Bombay Presidency appears to have been urgent.

The other two Bombay Acts relate to tramways and municipal affairs.

4. BENGAL.

Acts passed—3.

Landlord and Tenant.—The Bengal Tenancy (Amendment) Act, 1907 (No. 1), makes some important amendments in the Bengal Tenancy Act, 1885. The object of the Act was described in the "statement of objects and reasons" which accompanied the Bill as being:

(1) On the one hand, to give landlords greater facilities for the

collection of rents, and, on the other hand, to discourage their evading the provisions of the Act of 1885 with regard to the enhancement of rent by entering into unfair, inequitable, and collusive compromises with their tenants;

(2) to give greater authority to the record of rights, when duly prepared and published;

(3) to empower the Government to distinguish between good and bad landlords, and to take steps in the case of the latter for the reduction of rents, when they appear to have been so unduly enhanced as to be oppressive to the cultivators of the soil; and

(4) to revise the Act of 1885 to the extent of removing such defects in it as the working of the Act during the past twenty years has brought to light, and such ambiguities and anomalies as have given rise to conflict of opinion and judicial decision.

The Act is the outcome of prolonged discussions and deliberations which began substantially in 1901. The facilities granted to landlords consist in giving them the power to avail themselves of the summary procedure available to the Government under the Public Demands Recovery Act. The conferment of such a power on private persons is open to obvious criticism, and is hedged round by various qualifications and safeguards.

Disorderly Houses and Street Noises.—The Calcutta and Suburban Police (Amendment) Act, 1907 (No. 3), gives powers for the suppression of disorderly houses, and for stopping street noises in places where persons are dangerously ill, or where the noises seriously interfere with the reasonable occupation of persons resident or carrying on business in the neighbourhood.

The other Bengal Act is of no general interest.

5. EASTERN BENGAL AND ASSAM.

Acts passed—3.

The new Legislature for Eastern Bengal and Assam has passed an Act (No. 1) for amending the Bengal Land Registration Act, 1876, another (No. 2) for dealing with brothels and disorderly houses, and a third (No. 3) for amending the Bengal Court of Wards Act, 1879.

6. UNITED PROVINCES.

Acts passed—2.

Of the two Acts passed by the Legislature, one makes miscellaneous amendments in the local Municipalities Act, the other in the local Vaccination Act.

7. PUNJAB.

Acts passed—2.

Alienation of Land.—The Punjab Alienations of Land Act, 1900, was an Act passed by the Governor-General's Legislative Council for the province of the Punjab, and was made the subject of a pretty full note in the review of Indian Legislation for 1900. Its main object was to protect agriculturists against money-lenders by placing restrictions on the alienation of land by agriculturists. Who and what is an agriculturist? The Act of 1900 contained a highly artificial definition of the term. But it has now been found, according to the "Statement of Objects and Reasons" which accompanies the amending Bill, that there are grave objections to the existence of the statutory agriculturist as defined by the Act of 1900.

The fundamental objection is that the so-called agriculturist is, in many cases, not an agriculturist at all, and that when he is not a member of a notified agricultural tribe, he frequently belongs to the *bania* (money-lender) class whose acquisition of the lands of agricultural tribesmen it is the primary and avowed object of the Act to prevent. In every village where there are agriculturists who are not members of an agricultural tribe this is a standing menace to the working of the Act. If a *bania* has held land for thirty or forty years in a village, he does not cease to be a *bania*; and if he is a landowner it does not follow that he is not also a money-lender. There is nothing in the structure of rural society to separate *banias* who have held land since the first Regular Settlement from others. At present such a *bania* is in a position of great advantage, because the door closed upon the mass of the money-lending classes is left wide open to certain members of those classes who, in the absence of competition of their class, have better opportunities now of permanently acquiring the lands of *zamindars* than they had before the Act was passed.

Precisely. This is what many critics of the 1900 Act said when it was passed. You cannot divide the world into sheep and goats, or Indian rural society into agriculturists and money-lenders. So the Punjab Alienation of Land Amendment Act, 1907 (No. 1), abolishes the statutory agriculturists created by the Act of 1900. It also tries to prevent evasion of the main Act by putting transfer of occupancy rights in land on the same footing as transfer of land, by placing restrictions on transfers made ostensibly for religious or charitable purposes, by altering the provisions as to mortgages, and by enabling the executive authority to direct the attention of superior Courts to cases in which decrees for transfer of land have been obtained in subordinate Courts by consent or otherwise, in contravention of the provisions of the Act. No student of the history of English law needs to be reminded how Courts of law can be used to evade restrictions on the alienation of land.

The other Punjab Act (No. 2) deals with motor vehicles.

8. BURMA.

Acts passed—8.

Local Government.—The main object of the Burma Towns Act, 1907 (No. 3), and the Burma Village Act, 1907 (No. 6), is to amalgamate the town and village law of Upper and Lower Burma. They contain interesting information about the public duties imposed by law on the headmen of wards and the elders of blocks in towns, and on the headmen of villages and, generally, on persons residing in village tracts. Under a section (18) of the Village Act, new villages cannot be established, and dwelling-houses cannot be erected or occupied outside villages, without the permission of the Deputy Commissioner, and there is a mediæval touch about the reason given in the "Statement of Objects and Reasons" for the latter provision: "It is of importance for the prevention of crime that criminals and men of bad character should live in villages, and should be prevented from setting up isolated huts where they may escape observation."

The other Burma Acts amend the Lower Burma Land and Revenue, Towns and Village Land Acts, the Rangoon Waterworks and Police Acts, and the Lower Burma Courts Act, and empower the Local Government to make rules for the regulation of traffic and the preservation of the surface of public roads.

There is also a special Act for regulating traffic in some dangerous narrows on the river Irrawaddy.

9. REGULATIONS UNDER 33 Vict. c. 3.

Regulations made—7.

Frontiers and Disturbed Districts.—Regulation No. 1 confers powers for preventing persons from passing across the frontier out of certain parts of Upper Burma and the Hill District of Arakan into foreign or unadministered territory or Shan and Karenni States, and from entering or residing or travelling in disturbed parts of Upper Burma or the Arakan Hill Districts.

Municipalities.—Regulation No. 2 contains a Municipal Code for Coorg.

Landlord and Tenant.—Regulation No. 3 gives powers for enhancing rent on the ground of landlords' improvements, and enables proprietors of villages to acquire land for building and other purposes.

The other Regulations amend the Land and Revenue Regulations for Upper Burma, Ajmer, and Coorg, and the Regulation for Courts in Ajmer.

III. EASTERN COLONIES.

1. CEYLON.

[*Contributed by* EDWARD MANSON, ESQ.]

Ordinances passed—23.

Notaries (No. 1).—Every notary is to be appointed by warrant under the hand of the Governor. Advocates and proctors of the Supreme Court are to be eligible for appointment; also other persons if of good character, of the age of twenty-one, having been articled clerks and passed an examination.

Every notary must have his office within the area specified in the warrant. He must also sign a declaration that he will faithfully execute his office and give a bond to secure such fidelity.

A list of notaries to be posted in the Courts.

A notary's warrant may be cancelled on conviction for any offence which renders him unfit.

Rules are given for the guidance of notaries.

Indian Hemp (No. 2).—The cultivation of Indian hemp in the Colony, or its importation or sale, is made punishable with fine or imprisonment or both. There is an exception in favour of persons licensed to sell poisons.

Registration of Titles (No. 3).—This is a very elaborate Ordinance dealing with the registration of titles to land and of deeds affecting land, but it is not to come into operation till such date as the Governor-in-Executive-Council shall by Proclamation appoint.

Supply (Nos. 4, 20, 23).

Vagrants (No. 5).—"Vagrant" in this Ordinance is defined as meaning:

"(1) Any person found asking for alms;

"(2) Any person not being physically able to earn or being unwilling to work for his own livelihood, and having no visible means of subsistence."

A vagrant so defined may be sent to a house of detention, to be there detained until work has been found for him or he is discharged. Houses of detention for this purpose are to be provided by the Governor, and regulations made for their management. The superintendent of such a house is to do his best to find work for the inmates.

An agreement may be entered into by a vagrant with the Colonial Secretary, binding himself to leave the Colony, at the expense of the Government. Any vagrant escaping from the police is to be liable to imprisonment.

Plant Pests (No. 6).—"Pest," in this Ordinance, means such insects parasitic plants, or fungi as the Governor-in-Council shall from time to time

declare to be pests. The Governor may, after consultation with the Ceylon Planters' Association, or the Ceylon Board of Agriculture, establish a "Plant Pest Board" for any revenue district. The Board is to be representative, comprising members of Local Planters' Association and of the Burgher, Sinhalese, Tamil, and Mohammedan communities. Notice of any pest is to be given to a member or officer of the Board, and reported by him to the Board, and the Board may then by means of a notice require the owner or occupier of the land affected by the pest to take specified measures for the eradication or prevention of the pest. If the owner or occupier makes default in taking measures the Board may by its officer enter and do what is necessary.

Pearl Fisheries (No. 7).—This is an Ordinance to enable the Chief Justice of the Colony to be a member of the Board of Arbitration constituted by a lease relating to the Pearl Fisheries on the Coast of Ceylon.

English in Schools (No. 8).—A District School Committee is constituted in every school district (corresponding to the revenue districts) to act as a governing body. One of the chief headmen of the district—nominated by the Government agent, is to be on the Committee. The District Committee —among other duties—is to prepare a scheme for the establishment of vernacular schools—that is to say, schools in which instruction is given in addition to the vernacular ; but English is not to be compulsory. By-laws may be made requiring parents to cause their children—boys or girls—between six and twelve, or, in the case of Tamil and Mohammedan girls, between six and ten, to attend school, subject to a penalty of twenty rupees, in default of reasonable excuse. No school in which religious instruction is given is to be considered a "public vernacular school" unless the District Committee is satisfied that religious instruction is not given to people of other denominations than that to which the school belongs, if the parents object ; that such pupils, if their parents object to their being present in the room where religious instruction is given, are allowed to study in another part of the school or their presence excused, and that a notice of these regulations is conspicuously posted up in the school in English, Sinhalese, and Tamil. The powers and duties of Village School Committees are also defined.

"Estate Schools," that is, schools for the education of children of labourers on any estate, are preserved, and power is given to combine estates for this purpose.

Roads (No. 9).—By this Ordinance the proprietors of any two or more estates situate in the same locality, to which there is no available cart-road leading from some convenient principal thoroughfare, may apply to the Provincial Committee to have the provisions of the Ordinance extended to such locality. The Provincial Committees may then define the limits of the district, and, with the assent of two-thirds of the proprietors of the district so defined, assess the estates in the district for the construction and maintenance of the roads.

Widows and Orphans Pension Fund (No. 10).—This Ordinance amends the Ordinance on the same subject of 1900. In the event of a bachelor retiring from, or otherwise quitting the public service, a moiety of the contributions made by such bachelor, but without interest, is to be refunded to him; if he dies, to his personal representative. A widower without children is to be refunded a similar moiety. There is a Schedule containing a Synopsis of Rules for calculating Pensions.

Motor-boats (No. 11).—No launch, that is, a boat under 50 tons mechanically propelled, is to proceed on any voyage unless she has a certificated "tindal" (person in charge) and engineer. The Governor may appoint persons to grant certificates of competency—after examination—to "tindals" and engineers.

Immigration (No 12).—This is one of a class of Ordinances with which we are very familiar. If, on the arrival of any vessel at any port or place in Ceylon, there is on board any person—other than a native of Ceylon or of British India going to Ceylon as a labourer—who, in the opinion of any Visiting Officer visiting such vessel, is unable by reason of physical or mental infirmity to maintain himself by his own labour or is destitute or likely to become chargeable to the Colony, the officer shall give notice that such person is a "destitute immigrant." A "destitute immigrant" is not to land until some approved person in Ceylon guarantees repayment of his charges.

Stowaways are liable to a penalty and imprisonment.

Cruelty to Animals (No 13).—"Animal" here means any domestic or captured animal.

If any person in any public place "(*a*) Cruelly and unnecessarily beats, overdrives, overloads, or otherwise ill-treats any animal; (*b*) binds or carries any animal in such a manner or position as to subject the animal to unnecessary pain or suffering; or (*c*) offers, exposes, or has in his possession for sale any live animal which is suffering pain by reason of mutilation, starvation, or other ill-treatment, or any dead animal which he has reason to believe to have been killed in an unnecessarily cruel manner," he is punishable with a fine of 100 rupees or three months' imprisonment.

Killing any animal in an unnecessarily cruel manner is also punishable with fine and imprisonment: so, too, is using any animal for work which is unfit by reason of disease, infirmity, wounds, or sores.

A prosecution under the Ordinance must be instituted within three months.

Statute Law Revision (No. 14).—This is an Ordinance revising the statute laws of the Colony in a number of particulars.

Registration of Birth and Deaths (No. 25).—Amendments are made in the Principal Act, 1900 (No. 23), in the matter of lost copies, searches, and declarations.

Forests (No. 16).—Where lands have become the property of the Crown under certain Ordinances, or been acquired by the Crown for public purposes,

the Governor may, by Proclamation published in English, Sinhalese, and Tamil, declare all such lands to be a Reserve Forest. Thenceforth any person who trespasses or feeds cattle, or fells or damages trees, or kindles a fire, or collects any forest produce in the "Reserve," is liable to six months' imprisonment. These provisions may be made applicable to forests leased by the Crown.

The Governor may constitute any portion of Crown forest a "village forest" for the benefit of any village community, but certain scheduled trees are not to be touched. Rules are made as to the cutting of trees, kindling of fires, etc., in forests which are not "Reserve Forests" or "Village Forests."

Rules are also made as to the transit of timber and forest produce by land or water.

Drift and stranded timber are to be deemed the property of the Crown until other title proved. A conservator and forest officers are to be appointed.

Joint Stock Companies (No. 17).—Companies are empowered by special resolutions to change their registered office, to sub-divide their shares, and to consolidate them into shares of larger amount.

Waterworks (No. 18) provides for transfer of the Ceylon Government Waterworks to the Municipal Council of Colombo.

Marriages (No. 19).—This does not include marriages of Kandyans or of Mohammedans.

The island is to be divided into districts, and a marriage registrar appointed for each, his name to be conspicuously exhibited at his office in English, Sinhalese, and Tamil. On the application of the minister, proprietor, or trustee of a building used as a place of Christian worship, such building may, with certain consents, be registered for solemnising marriages.

No marriage is to be valid where the male is under sixteen or the female under twelve—in the case of a daughter of European or Burgher parents, under fourteen.

Certain prohibited degrees of relationship are fixed. Persons marrying in contravention of these rules are liable to one year's imprisonment.

No marriage is to be dissolved during the life-time of the parties except by judgment of divorce *a vinculo matrimonii*. Such judgment must be founded either on the ground of adultery subsequent to marriage, or of malicious desertion, or of incurable impotency at the time of such marriage.

No suit is to lie to compel marriage on the ground of promise or seduction.

A promise of marriage, to be actionable in damages, must be in writing.

A legal marriage is to legitimate children procreated before, if not of an adulterous intercourse.

In case of the marriage of minors the parent or guardian's consent is required.

Marriages may be solemnised either by a minister or before the registrar. Article 24 prescribes the preliminaries to be observed prior to marriage.

Such preliminaries may be despensed with in the case of death-bed marriages.

Municipality (No. 23) fixes the salary to be paid to the chairman of a Municipal Council.

Loans to Government (No. 22) declares the terms for loans authorised to be raised by the Government of the Colony and provides for the creation of Ceylon Inscribed Stock.

2. HONG KONG.

[*Contributed by* H. C. GUTTERIDGE, ESQ.]

Probate.—No. 1 amends s. 66 of the Probate Ordinance, 1897.

Married Women.—No. 5 repeals s. 9 of the Married Women's Property Ordinance, 1906, and substitutes for it a fresh section, which reproduces s. 5 of the Imperial Married Women's Property Act, 1882. By a further amendment it is provided that the above-mentioned repeal is not to be operative as regards judgments or orders pronounced; or charges, trusts, or dispositions made before June 15, 1906.

Bills of Exchange.—No. 7 amends the law as to Bills of Exchange. It reproduces the provisions of the Imperial Crossed Cheques Act, 1906, and further enacts that drafts on bankers payable to order on demand shall be sufficient authority for payment without proof of indorsement.

Public Health.—No. 8 amends s. 175 of the Public Health and Buildings Ordinance, 1903.

Life Insurance.—No. 11 substantially reproduces the provisions of the Imperial Life Assurance Companies Act, 1870. It does not apply to companies which have made a deposit in Great Britain under the provisions of the Imperial Act. No provision is made for the return of the deposit when the accumulated premiums have reached a certain sum, as provided by s. 3 of the Imperial Act.

Local Communities.—No. 12 amends the Local Communities Ordinance, 1899, by providing for a levy on the inhabitants where extra crime requires the provision of extra police.

Criminal Law.—No. 13 limits the imposition of punishment by public exposure in the stocks to offences punishable with imprisonment only.

Sedition.—No. 15 recites that, owing to the proximity of the Colony to the mainland of China, and to the tendency to create internal dissension in that Empire, it is desirable to prohibit the publication in the Colony of matter calculated to excite such dissension. The Ordinance provides that any person publishing matter calculated to excite tumult or disorder in China, or to excite persons to crime in China, shall be liable to two years' imprisonment, with or without hard labour, or to a fine not exceeding

$500, or to both. The offence thus created is to be triable by the Supreme Court only.

Companies.—No. 16 authorises companies registered under the Companies Ordinance, 1865, to keep local registers of their members outside the Colony.

Minor Ordinances.—No. 2 incorporates the Hong Kong College of Medicine.

No. 3 and No. 14 deal with appropriation.

No. 4 removes doubts as to the validity of the proceedings of the Supreme Court from June 25, 1902, to the present time which have arisen from the fact that one of the Puisne Judges of the Supreme Court temporarily acted as Attorney-General of the Colony.

No. 6 authorises the Hong Kong and Shanghai Banking Corporation to increase its capital.

No. 9 grants the Nederlandsch-Indische Handelsbank certain facilities for the transaction of business in the Colony.

No. 10 extends similar privileges to the Nederlandsch Handel Maatschappij.

3. STRAITS SETTLEMENTS.

[*Contributed by* T. Baty, Esq., D.C.L.]

37 Ordinances.

Labuan (Ords. 1 and 35).—Formerly a separate Colony, this district has been incorporated in the Straits Settlements, under Letters Patent purporting to be made under the Colonial Boundaries Act, 1895. It is singular if the effect of this Act is to enable the Crown to abolish a colony by extending the boundaries of another so as to include its territory. On the assumption of the validity of the Letters, the present Ordinance applies the law of the Straits to Labuan, *mutatis mutandis*, with the exception of twelve Labuan Ordinances dating from 1849 to 1906 which are saved, and of thirteen Straits Ordinances which are meanwhile suspended, in Labuan.

Pauperism (Ord. 7).—The liabilities of shipmasters importing "undesirables" are made more precise, by excepting the cases where the imported alien (1) had $50, (2) was under an engagement of employment, (3) was a stowaway and duly handed over to the police.

Medicine (Ord. 11).—A new Act replaces that of 1905 (J.C.L. vii. pt. ii. 430) regarding a Medical Council. The ambiguity pointed out in this Journal has been remedied. It is now clear that the Colony declines to allow its Courts to be used by practitioners who do not fulfil its standard,

even if their services were rendered in their own country. Thus an Argentine doctor who treated an Englishman in port at Buenos Ayres, would be unable to sue him if he completed his journey and settled down in Singapore.

Drugs (Ord. 14).—The Opium Act (20) of 1906 is left untouched, but the Morphine Act (14) of 1904 is repealed, the present Ordinance being substituted for it: under it, the Governor may declare other drugs besides morphine and cocaine within its terms. It may be difficult to say how far its extended working will be consistent with the Poisons Act of 1905 (No. 10). "Twelve official doses" is the quantity substituted for "five grains" as the maximum which can be possessed without licence; but so far as appears, there is no definition of this novel phrase. The clause disappears which penalises the mere possession of any morphine whatever. The omission to protect doctors from the penal consequences of "using a place for the administration of drugs" has not been rectified.

Tamil Immigration (Ord. 17).—The Madrasis are desirable immigrants. The present statute provides for a fund to be raised to pay the expenses of recruitment (including passage-money). It is derived from a rate levied on employers of Tamil labour. Elaborate statistics of the number of hours worked by Tamils during each quarter have to be furnished by the employer, and form the basis of the rate. But gardeners, clerks, and managers are not within the enactment.

Tramways Mortgage (Ord. 28).—This inserts a new section in the Tramways Act of 1902, and permits any tramway company, with the consent of the Governor, to mortgage their undertaking. The mortgagee is not to sell the assets, except such as are not essential to efficiency (unless with the like consent). If he goes into possession or sells, he or his purchaser will stand in the place of the company; but not so as to be liable for default other than his own.

Evidence (Ord. 29).—The proof of finger impressions is facilitated by including them along with handwriting in the Evidence Act of 1893, ss. 45 and 73. "British Possession" statutes are made receivable in evidence if purporting to be printed by a Government printer. It is instructive, and may be important, to notice that "British Possession" is defined to include Cyprus, the Federated Malay States, and Brunei—but not Sarawak.

Judicature (Ords. 22, 30, 31 and 32).—Ord. 30 is a Judicature Act, and generally consolidative. The important s. 19 of the old Judicature Act of 1878, defining the cases in which the Court has jurisdiction when the defendant is abroad, has been dropped. The causes for which persons may be struck off the Rolls are particularised. Ord. 31 is a new Code of Civil Procedure, and Ord. 32 one of Criminal Procedure, amending an Ordinance of 1900. Police supervision is introduced. Power is given to

the Public Prosecutor to desist from a summary trial, without effecting an acquittal. The list of jury exemptions is lengthened, and now includes legislative councillors, medical practitioners, chemists and druggists, legal practitioners, and local judges. The power of reviewing jury lists is transferred from the Legislative to the Executive Council.

Criminal appeals to the Supreme Court are to be heard by one judge unless otherwise ordered. The practice in Habeas Corpus is elaborated.

Municipal Management (Ord. 37).—The Acts of 1903 (J.C.L. vi. 342) and 1906 (*ib.* viii. (2) 294) have again been supplemented by a long string of provisions, of which space will only permit the mention of a few. "A place of public resort" is defined as "a building used or constructed or adapted to be used either ordinarily or occasionally as a church, chapel, mosque, temple, or other place where public worship is, or religious ceremonies are, performed (not being merely a dwelling-house so used); or as a theatre, public hall, public concert room, public ball-room, public lecture room, or public exhibition room; or [as (?)] a public place of assembly for persons admitted thereto by ticket or otherwise; or used or constructed or adapted to be used either ordinarily or occasionally for any other public purpose." Provisions are introduced which practically give Municipal Commissions power to remodel the town and expropriate owners accordingly.

Bankruptcy (Ord. 39).—This amends the Act of 1888. The effect of *Bower* v. *Hett* [(1895) 2 Q.B. 51] is avoided by including money paid to avoid *seizure* or sale along with the proceeds of sale in the hands of the sheriff.

Miscellaneous.—The remaining Ordinances treat of *Appropriation*, *Singapore and Penang Waterworks Loans*, *Infant Jesus Convent* (*Incorporation of Superior and Successors*), *Mineral Oil Crown Reservations*, *Labuan Port Dues*, *Tanjong Pagar Dock*, *P. and O. Crown Grant of Foreshore* (*Validation*), *Sunday Labour*, *Savings Banks*, *Medicated Wine*, *Postal Ships*, *Excise*, *Appropriation*, *Criminal Law*, *Police*, *Chinese Immigrants*, *Harbours*, and *Stamps* (*Consolidation*).

4. FEDERATED MALAY STATES.

[*Contributed by* T. Baty, Esq., D.C.L.]

These so-called "foreign" communities, which are so treated because, in the historic words of Governor Jervois, it "might have been inconvenient" to make their people British subjects, adopted in 1907 legislation which again followed much the same course in each district. The enactments related to *Indian Immigration*, *Tamil Immigration Funds*, *Workmen's Hospitals*, *Medical Registration*, *Drugs*, *Appraisers*, *Military Forces*, *Coinage*, *Officers' Guarantee Fund*, *Sanitation*, *Billiard Saloons*, *Prisons*, *Forests* and *Plantations Protection*, to which list Pêrák added *Succession to Land*

Duties (Repeal), *Krian Irrigation*, *Jinrikishas* and *Gaming*. With the last two Pahang also dealt, but it did not legislate on Drugs nor on Workmen's Hospitals (which it had arranged for in 1906); and in military matters though it dealt with the regular forces it did not establish volunteers (which also it dealt with in 1906). The last remark is true of the Negri Sembilan, which also omitted Indian Immigration. Most of the measures are amending statutes merely, and affect only points of minor detail. It may be noted that s. 159 of the old Prison Rules, which rendered even debtors and unconvicted persons liable to beating upon slight occasions, is modified, so as to be more in accordance with sound principle. Attention was called to the old rule in these columns (J.C.L. vi. 99) two years ago.

5. MAURITIUS.

[*Contributed by* EDWARD MANSON, ESQ.]

Ordinances passed—22.

Supply (No. 2).

Public Officer (No. 3).—This Ordinance empowers the Governor, whenever a public officer dies, to order a month's salary or pension of such officer, from the date of his death, to be paid to his widow or to his children or other heirs. To make up for this generosity, the successor to the office is for the first month to receive pay at his former rate of salary.

Sale of "Gandia" (No. 4).—Every person licensed to sell "gandia" wholesale is to keep a register in a prescribed form showing the quantities sold.

Customs (No. 5) amends the duty on Hessian cloth and certain kinds of machinery.

District Courts (No. 6) gives the magistrates of the District Courts jurisdiction in cases of indecent assault and sexual intercourse.

Post Office (No. 7).—The Colonial Postmaster is empowered to inflict fines, not exceeding ten days' pay, on deputy postmasters, learners, mechanicians, linesmen, letter-carriers, travelling postmen, couriers, and servants guilty of drunkenness, carelessness, or other misconduct, the proceeds of such fines to be paid into the Post Office Reward Fund.

Immigration (No. 8).—This is one of a now common class of Acts for keeping out destitute, vicious, or criminal immigrants. On the arrival in the Colony of any vessel having on board any person who, in the opinion of the Visiting or Health Officer, is unable, by reason of physical or mental infirmity, to maintain himself by his own labour, or is destitute and in either case is likely, if permitted to land, to become chargeable to the Colony

the officer is to give notice to the master that such person is a "destitute immigrant," and is not allowed to land unless some approved person in the Colony undertakes to repay any moneys expended out of the public funds in relief. A master landing a destitute immigrant is liable to a fine of 500 rupees. For the purpose of enabling the Visiting Officer to act the master is to furnish a list of passengers in a prescribed form. The Governor may also, by Proclamation, prohibit the landing of any vicious or criminal immigrant.

Criminal Law (No. 11).—This amends the penal code in the matter of blackmail, embezzlement, and the taking of gifts by public servants. Whoever falsely charges, or threatens to charge, any person with having committed an offence with intent to extort from such person money or other property is punishable with penal servitude not exceeding ten years or imprisonment. Corruption by public officials is made punishable with penal servitude not exceeding seven years and a fine of 1,000 rupees.

Pensions (No. 12) amends the law as to reckoning service for pension purposes.

Hurricane Loan Administration (No. 13) amended.

Pensions and Widows and Orphans Fund (No. 15) extends the Pensions Laws of the Colony to the Immigration Officers in India.

Roads (No. 16) provides for the widening and improvement of roads.

Crown Lands (No. 17) remits—in favour of poor tenants—costs of transcribing a title-deed.

Telephones (No. 19) empowers the Governor in Executive Council to grant licences for telephones and charge a royalty. An undertaker so licensed may erect telephones and posts, and so construct works "upon, over, under, across, or along" any street, road, land, building, railway, canal, or other property, but in doing so must comply strictly with the official regulations and do as little damage as possible. No installation is to pass over or infringe upon any War Department property. Power is reserved to the Government to purchase any telephone on giving six months' notice.

Explosives (No. 20).—Regulations may be made as to the storage of oils, acids, or gases in any private magazine, and as to oils, acids, and gases giving off an inflammable vapour at any temperature above 73° Fahrenheit.

Tramways (No. 21).—Ordinance No. 24 of 1887, Art. 4, amended as to notice.

Vaccination (No. 22).—This is a thoroughgoing Ordinance, of forty-five Articles, for the extinction of smallpox. Vaccination stations are to be provided in each district, and notice of the day and hour of the public vaccinator's attendance is to be posted up in English, French, Hindustani and Tamil.

Upon every declaration of the birth of a child notice is to be served on the declarant requiring such child to be vaccinated, and he must cause the child to be vaccinated within ten months from birth. Every minor between ten and eleven is liable to compulsory vaccination. If a person having the custody of any child or minor refuses or fails to have such child or minor vaccinated, he is liable to a fine of 500 rupees; and there are no concessions in the shape of a "conscience clause."

6. SEYCHELLES.

[*Contributed by* EDWARD MANSON, ESQ.]

Ordinances passed—11.

Taxes (No. 1) provides for the levying and collection of certain direct taxes.

Shipping (No. 3) provides for the giving of pratique to vessels loading or unloading cargo at the outlying islands.

Contracts of Service (No. 5).—No servants are to leave Seychelles in order to proceed to any of the Islands unless they shall have previously entered into a written contract of service, as required by s. 9 of the Mauritius Ordinance No. 4 of 1904. The Collector of Customs, before giving clearance to any vessel bound for the Islands, is to ascertain that all servants on board such vessel are under such written contract of service.

Les Rivages de la Mer (No. 6).—The Governor may under this Ordinance grant leases to the owners of Islands or parts thereof and to lessees of Crown lands in Seychelles of the reserves along the sea-coast—*rivages de la mer.* This includes all the foreshore between high and low water-mark.

Sale of Goods (No. 7).—A "fishmonger" may sell any fish caught by himself, either in his own boat, or at any legal landing station, or in any market.

Bread and cake sellers in a market or elsewhere, lime-burners, mattress-makers, money-changers, tailors, and hawkers of certain descriptions, are exempt from the obligation of taking out a licence.

Currency (No. 8) amends Schedule II. of Ordinance No. 7 of 1899 by adding "Coins which have been altered in any way from their original condition otherwise than by fair use and wear."

Storage of Dangerous Goods (No. 9).—The Governor in Executive Council is empowered to make regulations respecting the storage of dangerous goods in and out of the town of Victoria.

Treasury Deposits (No. 11).—The Treasurer is empowered to receive moneys in deposit into the Treasury for safe keeping, and to make rules as notices on the withdrawal of deposits.

IV. AUSTRALASIA.

1. COMMONWEALTH OF AUSTRALIA.

[*Contributed by* HERMAN COHEN, ESQ.]

Public Acts—12.

The bulk of the legislation consists of Supply or Appropriation Acts.

Parliamentary Allowances (No. 5).—Each senator and each member of the House of Representatives is for the future to receive an allowance of £600 *per annum*, except in the case of holders of certain paid offices, who are to receive £400. The money is paid out of the Consolidated Revenue Fund.

Commonwealth Salaries (No. 7).—States may tax the official salaries of officers of the Commonwealth, in common with other salaries earned within the State. The Act does not apply to the Governor-General.

Judiciary (No. 8).—This is a measure of the class with which all federations are familiar. The principal clause runs: "In matters (other than trials of indictable offences), involving any question, however arising, as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States, or as to the limits *inter se* of the constitutional powers of any two or more States, the jurisdiction of the High Court shall be exclusive of the jurisdiction of the Supreme Courts of the States; so that the Supreme Court of a State shall not have jurisdiction to entertain or determine any such matter, either as a Court of first instance or as a Court of Appeal from an inferior Court." The other clauses appear to be consequential.

Disputed Elections and Qualifications (No. 10).—In some instances petitions to the Senate against the return of a Senator were not removed into the Court of Disputed Returns. This Act brings these cases into line with the general law. The Court must consist of at least three judges.

Either House may refer questions—"state a case"—relating to Qualifications of Members as to vacancies to the Court.

Bounties (No. 12).—A sum of £339,000 is appropriated during fifteen years for the payment of bounties. The provisions are of the usual order in such Acts, but s. 6 may be noted: "Every grower or producer who claims bounty under this Act shall specify the rates of wages paid in respect of the labour employed by him, other than the labour of members of his family, in growing or producing the goods; and the minister, if he is of opinion that the rates so paid are below the standard rates paid in the place or district in which the goods are grown or produced, may withhold the whole or any part of the bounty payable."

2. NEW SOUTH WALES.

[*Contributed by* NORMAN BENTWICH, ESQ.]

Public Acts passed—23.

The output of legislation from the Colony during the year 1907 was small, and most of the new Law consists of Acts amending previous Statutes. Two important measures, however, were passed, which impose new obligations upon the State for the benefit of the poor, viz. an Act to make provision for pensions in certain cases of illness and accident, and an Act to make provision for the defence of poor prisoners.

Supply.—Nos. 4, 5, 19, 20.

Gaming (No. 2).—This Act amends the Gaming and Betting Act of 1906, and extends its enactments against what is one of the most prevalent vices in the Colonies.

Betting or wagering on any licensed race-course or coursing-ground approved by the Minister, on which any sports other than horse-races, pony-races, trotting races, and coursing are being held, is prohibited.

The number of days in a year on which meetings for trotting races may be held on any licensed race-course are limited to twenty where the course is situated within forty miles of Sydney, and to six in other cases.

Minister for Agriculture.—No. 6 empowers the Governor to establish a Department of Agriculture and the office of Minister of Agriculture.

Income-tax (No. 7).—From the year 1908, the deduction of income to the amount of £200, which is exempted from Income-tax, is to be made in the first place from such income as is derived from personal exertion; and when the income of any person, not being a company, derived from personal exertion exceeds £200, such person shall be entitled to a further deduction, but so that the total deduction shall not in any case exceed £1,000.

Repeal of Stamp Duties (No. 8).—The duties on receipts, bills of exchange, promissory notes and drafts are remitted, and provision is made for refunding the value of uncancelled duty-stamps impressed upon unexecuted forms.

Companies.—No. 9 makes several amendments in the Companies Act which was passed in 1906. The list which a company has to make in each year is altered in certain particulars, and provision is made for the Attorney-General, in his discretion, to except any company from making the list. A company must file a balance-sheet, containing a statement of its assets and liabilities, within three months of the general meeting at which a balance-sheet is presented; and every director, manager, and public officer of the company who knowingly and wilfully authorises or permits default in so

doing, is made liable to a penalty not exceeding £5 for every day during which such default continues.

Closer Settlement.—No. 12 amends the Acts of 1904 and 1906 dealing with the same subject. The Governor may constitute three Advisory Boards, consisting each of three members, to report upon land which is suitable for closer settlement, and to estimate the price which should be paid for it. Every purchase or resumption is to be subject to approval by both Houses of Parliament, and the landowner may appeal against the valuation set upon the land to a special Court, and may require the Governor to include in the resumption land contiguous to that required for closer settlement.

Local Option (No. 21).—This is another amending Act, and provides an indemnity for certain events which have already taken place; it also makes special provision for estimating the votes given at any local option vote taken before the commencement of the Act.

Pensions (No. 22).—Subject to the provisions of the Act, every person permanently incapacitated for any work by reason of accident, or his being an invalid, is entitled to a pension if the following conditions are fulfilled:

(*a*) That he is above the age of sixteen years, and is not in receipt of an old-age pension.

(*b*) That he has resided in the State continuously for at least five years preceding the date on which he applies for the pension, that he has become incapacitated within the State, and is residing in the State on the date on which he establishes his claim.

(*c*) That the accident or illness was not self-induced or brought about with a view to obtaining a pension.

(*d*) That he has no claim against any employer or company compelled under private contract or public enactment to maintain or compensate him.

(*e*) That his income or property does not exceed the limits prescribed in the case of applicants for old-age pensions.

(*f*) That he has not directly or indirectly deprived himself of any income in order to qualify for the pension.

(*g*) That his relations, *i.e.* father, mother, husband, wife, or children, do not, either individually or by a joint contribution, adequately maintain him (s. 5).

The amount of the pension is not to exceed £26 a year, and is in every case to be determined by the granting authority having regard to any income or property possessed by the applicant, and the fact that his relations contribute to his maintenance, and the fact also of his having received compensation from any source in respect of any injury (s. 6).

When the applicant has made out a *prima facie* case, he is in all cases of invalidity, and in cases of accident where the permanent incapacity

for work is not manifest, to be examined by a Government medical officer, who shall certify as to his incapacity. No person to whom a pension certificate has been issued shall receive any payment for the period during which he is an inmate of a charitable institution.

Every instalment of a pension which falls due while the pensioner is out of the State is to be absolutely forfeited, unless leave for such absence has been previously obtained from the Colonial Treasurer.

Payments are to be made by the Colonial Treasurer; and the Central Board for Old-Age Pensions has the general administration of the Act, its decision on any point being final, subject to the control of the Colonial Treasurer.

Poor Prisoners' Defence (No. 23).—Any person committed for trial for an indictable offence, at any time before the jury is sworn, may apply to the committing magistrate, or to a judge of the Supreme Court, or to a chairman of quarter-sessions for legal aid for his defence. And if the judge or chairman or magistrate is of opinion, on the facts before him, that such person is without adequate means to provide defence for himself, and that it is desirable, in the interests of justice, that legal aid should be supplied, he is to certify this to the Attorney-General, who may thereupon cause arrangements to be made for the defence of the accused person and payment of the expenses of all material witnesses.

3. QUEENSLAND.

[*Contributed by* W. F. Craies, Esq.]

Acts passed—6.[1]

Finance.—7 Ed. VII., Nos. 1 and 2 are Appropriation Acts.

Income Tax.—7 Ed. VII., No. 5, further amends the Income Tax Act of 1902.[2]

S. 2 fixes the calendar year as the year of assessment.

The tax on income derived from the produce of property is reduced from 1*s.* to 9*d.* (s. 3).

Exemption from tax is given to persons not being companies or absentees whose whole income, from whatever source, does not exceed £200 (s. 3). Where the income exceeds £200, £200 thereof is to be deducted as exempt from tax. In making the deduction income from personal exertion is first taken off.

[1] One (7 Ed. VII. No. 6) is a private Act dealing with the lands of the Acclimatisation Society.

[2] Journal, N.S. 1903, p. 361. This Act was amended in 1906 (Journal, N.S. 1907, p. 308). Under the Queensland system of editing Statutes the amendments are incorporated in the principal Act by the State printer.

Ss. 4 and 5 add new provisions supplementary to s. 20 of the principal Act for assessing the value of live stock.

Poor Prisoners.—7 Ed. VII., No. 4 provides for legal aid at the expense of the State for the defence of persons committed for trial for indictable offences who have not adequate means to defend themselves if it is desirable, in the interests of justice, that they should have legal aid. Application is made at any time before the jury is sworn to a judge of the Supreme Court, or of District Courts, or to a police magistrate. If satisfied that the case is one for legal aid, the judicial functionary so certifies to the Attorney-General or minister for justice, who *may if he thinks fit* thereupon cause arrangements to be made for the defence of the accused person.[1]

Children's Courts.—7 Ed. VII., No. 3 establishes Children's Courts[2] for the trial of persons under, or apparently under, the age of seventeen. The Court is a Court of Petty Sessions, held before a police magistrate sitting alone, or two justices. The sittings, where practicable, are not to be in the ordinary police-court rooms. Special times are fixed for hearing charges against children, and notice is given to the parents or guardians, and, if the Court thinks fit, to religious or to charitable organisations or public institutions interested in the care or reform of children. The public, including newspaper reporters, are excluded (s. 5). Children, on arrest, are to be admitted to bail or given into the charge of some one who will undertake to produce them, and are not to be in a lock-up or prison pending the hearing, if their safe custody can be otherwise secured (s. 4).

The Court is not bound to convict on proof of the offence, but may *admonish* him, and, whether the child is convicted or not, may order parents or guardians to pay costs or damages incurred by reason of the offence (s. 6).

4. TASMANIA.

[*Contributed by* B. G. Ferrers, Esq.]

Acts passed—53.

Juvenile Smoking Prevention (No. 4).—S. 2 repeals the Juvenile Smoking Suppression Act, 1900.

S. 3 prohibits the use of tobacco by any person under the age of sixteen years: moreover, any such person found in possession of tobacco must satisfy the magistrate of justices that he is not in possession thereof for the purpose of using the same, or of permitting the same to be used by any person under the said age.

[1] Cf. the Imperial Act of 1903 (3 Ed. VII. c. 38).

[2] Already established in New Zealand and Victoria in 1906. (Journal NS. 1907, 322, 346.)

S. 4 enacts that any male person, apparently under the age of sixteen years, who is suspected of being in possession of tobacco, shall satisfy the enquiries of any constable.

S. 5 prohibits the supplying of tobacco to juveniles.

S. 7 provides that the onus of proof of age shall lie on the person charged under the Act.

S. 8. Offences under the Act to be dealt with summarily.

Trustees (No. 5).—This Act amends the Trustees Act, 1898. S. 3 empowers any trustee (being one of two or more trustees) who resides or is about to reside out of Tasmania, to delegate his powers to any person or persons residing in Tasmania, unless such delegation is expressly forbidden by the instrument, if any, creating the trust.

The consent of co-trustees is necessary.

Trustees so delegating their powers are to be liable for the acts and defaults of their attorneys.

S. 4. Trustees may, where there are more than two trustees, authorise any bank to honour cheques drawn upon the banking account of the trust by any two or more of the trustees.

Electoral (No. 6).—This is an Act to regulate Parliamentary Elections.

S. 2 repeals the Electoral Act, 1901, and the Electoral Amendment Act, 1904.

S. 63 makes a member of one House of Parliament ineligible for nomination for the other House.

Appropriation (No. 7).—This Act provides for the issue out of the Consolidated Revenue Fund for the service of the year ending June 30, 1908, of the sum of £325,216 8*s.* 11*d.*

Larceny (No. 8).—By this enactment the Larceny Act, 1863, is amended.

S. 2. reproduces the provisions of 1 Ed. VII. c. 10, s. 1 (England).

S. 3 provides that a person employed to collect money who fraudulently applies the same to his own use, shall be guilty of larceny. No prosecution can be commenced under this section without the consent of the Attorney-General or the Solicitor-General.

Supplementary Appropriation (No. 14).—This Act provides for the issue out of the Consolidated Revenue Fund, for the service of the year ending June 30, 1907, of certain sums of money not exceeding in amount respectively the several sums mentioned in the Schedule to the Act.

Inscription of Stock (Nos. 15 and 16).—These enactments authorise the Treasurer to borrow the sums of £30,000 and £544,611 for certain purposes mentioned in the Schedules to the Acts.

Habitual Criminals and Offenders (No. 17).—S. 2 (1). Persons convicted of certain offences who have been previously convicted on at least two occasions of offences falling within the same class, may be declared to be habitual criminals.

(2) Persons convicted of any offence mentioned in Class II. of the

Schedule to the Act, may, on proof of at least four previous convictions of offences enumerated in Classes I. or II., be declared by the judge to be habitual criminals, and be detained in a reformatory prison.

S. 3 empowers a justice or magistrate in certain cases to order a person who has been summarily convicted, to be brought before the Supreme Court to be dealt with as an habitual offender.

Ss. 6-8 provide for the release of habitual criminals and offenders. Any person detained under this Act may apply to the Supreme Court or a judge thereof for a recommendation that he may be discharged. The Court or judge may then make inquiry, and, on being satisfied that the applicant has sufficiently reformed, or that there is some other reason sufficient to warrant his discharge, may recommend the Governor to discharge him accordingly. The Governor may then direct the release of the applicant. Persons so released are required to make a report to the police once in every three months for a period of two years, failure to comply with this provision being punishable on summary conviction.

Provided the person released has not failed during the said period to make this report, and has not been again convicted and directed to be recommitted to a reformatory, he will cease to be an habitual criminal or an habitual offender, as the case may be.

State Advances (No. 20).—By this enactment the Governor is empowered to establish and maintain a bank for the purpose of promoting the occupation, cultivation, and improvement of the agricultural lands of Tasmania and its dependencies. The bank may make advances to farmers and other producers for certain specified purposes.

Deserted Wives and Children (No. 22).—This Act amends the Deserted Wives and Children Maintenance Act, 1873.

S. 4 provides that in certain cases where a wife has been deserted by her husband, or a child has been left by its father (the husband or father being out of Tasmania), the cost of bringing the defendant back is to be borne by the State.

Treasury Bills (No. 23).—The Governor is authorised to raise £50,000 by issue of Treasury Bills.

State Scholarships (No. 26).—By this enactment State Scholarships are provided for candidates under the age of thirteen years.

Motor Traffic (No. 27).—Part II. deals with Regulations :

S. 6 gives power to the Governor to make regulations for the use, control, lighting, registration, etc., of motor vehicles. The right to disallow any such regulation is given to both Houses of Parliament.

Where any regulation made under this Act is inconsistent with any regulation or bye-law made by any Municipal Council or other local authority, the former is to prevail.

Part III. makes penal provisions, and contains clauses similar to those found in the Motor Car Act, 1903 (England).

S. 7 is directed against reckless driving; ss. 8 and 9 deal with the question of licences.

Local Government (Traction Engines).—No. 30 is an Act to regulate traction engines. It embodies several of the provisions of the statutes of England and of Victoria.

Public Works Execution (No. 31).—This is an Act to provide for the execution of certain public works.

Assessment (No. 32).—The Act of 1900 is amended.

Under s. 4 the Governor has authority to alter or abolish existing Districts and to create new Districts.

Justices (No. 36).—By s. 6 of this Act the Governor is given power to appoint District Justices of the Peace.

S. 7. Mayors of every city and wardens of every municipality are to be justices *ex officio*. By virtue of s. 12 of the Act, every police magistrate has power to do alone whatever might be done by two or more justices sitting in Petty Sessions.

Exploration (No. 38).—This is an Act to appropriate the sum of £2,000 for exploring certain country.

Local Government (Tramways) (No. 49).—Part I. gives power to any fifty or more owners of ratable land to petition the Council to take a poll of the owners of land within the whole or any part of the municipality, to decide the question of surveying a tramway route.

S. 2. The Council may refuse or accede to the request. If a poll is taken and is in favour of a survey, the Council may request the Governor to have a survey made. The Governor may then grant a survey, and may authorise the payment of the expenses thereof out of any moneys provided by Parliament for that purpose (ss. 3-8).

Part II. deals with the constitution of the tramway area.

Part III. provides for the control and construction of tramways.

Public Health Amendment (No. 50).—This enactment provides that all offences against the Principal Act of 1903, and all penalties imposed by that enactment, may be prosecuted and recovered in a summary manner.

Infant Life Protection (No. 51).—Part II. deals with nursing homes, and provides for the registration, management, and inspection of such institutions.

Part III. provides for the maintenance of infants. A single woman with child may take proceedings against the father, whereupon the Court has power to require the defendant to pay for the maintenance of the mother during the two months preceding the birth of her infant, and also for the expenses of the maintenance of the mother and infant for the two months immediately succeeding its birth.

Game Protection.—No. 53 is an Act to amend the laws relating to the protection of game.

Ss. 5-7 provide for the protection of "imported" game. Pheasants, partridges, and grouse come within this category.

S. 10 imposes penalties for killing "native" game during the breeding season of such game.

S. 11 forbids the use of any gun, other than such guns as are habitually raised at arms' length and fired from the shoulder, for the destruction of certain species of wild fowl.

By ss. 18-21 the hunting of kangaroos, deer, etc., is forbidden during certain periods.

However, any person may during the close season kill any kangaroo or opossum upon his own land for the *bona fide* protection of his crops; but the skin of the animal killed is to be the property of the Crown (s. 21).

Ss. 23-30 deal with the subject of licences.

5. VICTORIA.

[*Contributed by* C. J. ZICHY-WOINARSKI *and* W. HARRISON MOORE, ESQS.]

Old Age Pensions (No. 2088).—This Act restores the limit of 10*s.* per week for old age pensions, which had been reduced to 8*s.* in 1901, and every pension granted before the commencement of the Act is increased by 2*s.* a week. The permanent appropriation for pensions is raised from £150,000 to £250,000.

Railways (No. 2119).—This is an omnibus Act which, *inter alia*, provides that any railway employee becoming insolvent shall forfeit his office unless he satisfies the Companies that his embarrassment has not been caused by fraud, extravagance, or dishonourable conduct; that no order may be made for the attachment of the wages of any railway servant, and no assignment of pay shall be enforceable. All officers and employees of the railways are exempted from giving service. The practice of "scalping" is dealt with by a series of sections forbidding any sale of railway tickets except with the authority of the Companies, and on a prosecution for a contravention the onus of proof that he has not been guilty is upon the defendant! The Act also provides for the establishment of a permanent fund, to be called the Railway Accident and Fire Insurance Fund, to which the Railway Companies are required to pay 10 per cent. of their revenue. The old limit of liability for injuries to passengers is retained at £2,000.

Murray Settlements (No. 2123).—This Act contains a scheme for settling unoccupied Crown lands on the Murray Border, and consists of provisions now familiar in settlement schemes as to the tenure and size of holdings, mode of purchase, improvements to be effected, residence, etc. The Act also contains special provision for water supply for domestic and irrigation purposes to the holders of land under the scheme.

Municipalities, Powers Extension (No. 2135).—This Act enables municipalities (1) to establish dipping places for sheep and to charge for

the use thereof, and (2) to contribute out of their funds to any agricultural school, technical school, or working men's college within their district not conducted for private profit, or with the assent of the Governor in Council to combine with any other municipality for the same purpose.

Municipal Government (No. 2129).—This Act appropriates £100,000 annually out of the Consolidated Revenue for the endowment of municipalities, to be apportioned according to a classification made by the Act. The municipalities in the several classes receive an amount ranging from 3*s.* to 12*s.* for every pound received as rates. No city or town is to receive any part of the endowment, and no borough more than £150.

Municipal Association (No. 2080).—This is an Act incorporating the Municipal Association, a body established in 1879 "for the purpose of promoting the efficient carrying out of municipal government in Victoria, and for watching over and protecting the interests, rights, and privileges of municipal corporations." It provides for the establishment of a Municipal Officers' Fidelity Guarantee Fund.

Factories and Shops (No. 2137).—This Act contains a number of miscellaneous amendments to the existing Laws on the subject. It provides (s. 5) that in any factory, or workroom, no place used for the purposes of the business shall be used as a sleeping-place, and "for the purposes of this section, all space on each floor of every building not separated by a permanent substantial wall or partition extending from floor to ceiling shall be deemed to constitute a single indivisible room or place, any characteristics to the contrary notwithstanding." It sanctions the extension (by resolution of both Houses of Parliament) of the Wages Board to any business usually carried on in a shop, carting or driving, building and quarrying, and businesses connected therewith (but not including agriculture), the sale or distribution of coal, coke, or wood, or the preparation of firewood for sale. The scope of the Furniture Board is extended to various auxiliary industries and occupations. S. 11 repeals the rules laid down in 1903 for the guidance of Wages Boards and the Court of Industrial Appeals, whereby the wages paid by reputable employers in any occupation was made the standard to which the minimum wage was to conform. In occupations where the hours of labour are determined, overtime (where permitted) is to be paid for at specified rates and allowances are to be made for "tea-money." Where an organised strike is about to take place or has taken place in an occupation to which any determination of a Wages Board or the Court of Industrial Appeals applies, the Governor in Council may suspend the determination for a period not exceeding twelve months (s. 34).

S. 35 enables the Government, when satisfied that any manufacture, plant, process, or labour used in factories or workrooms is dangerous or injurious to health, or life, or limb, to make such regulations as may be deemed necessary and reasonably practical to decrease or prevent danger.

There are some interesting provisions concerning the "small shops," relaxing in their case the closing provisions applied to shops, generally by the Factories Act (No. 2) 1905, s. 22. A "small shop" is defined (s. 41) as one in which only one assistant is employed, and is registered for the benefit of widows and old people, and in cases of great hardship such shops may be registered "at the absolute discretion of the Minister"; and the assistant must be the "husband, wife, child, stepchild, grandchild brother, sister, nephew, niece, grandparent, or parent" of the shopkeeper.

Closer Settlement (No. 2128).—This is an Act supplementary to the existing Acts for the promotion of closer settlement, and particularly to the Closer Settlement Act, 1904. It enables the Board constituted under the Act, when it deems it advisable to do so, to defer the disposition of properties, acquire and to continue the existing tenancies, and otherwise work the property until it is convenient to make it available for sale, and in the case of land made available but not disposed of to grant grazing permits. Where a lessee has expended all his capital in fencing, building, stocking, or otherwise improving his allotment, the Board may make advances to the lessee up to 60 per cent. of the value of his improvements for the purpose of (*a*) carrying on farming, grazing, agricultural and horticultural pursuits thereon, (*b*) adding to improvements, such advances, together with interest thereon at the rate of 5 per cent., to be repayable in equal half-yearly instalments over a prescribed period not exceeding sixteen years and to be a charge on the land. The Board is also empowered to make advances to municipalities in respect of the cost of making roads or channels to, or through, any estate acquired by it for the promotion of closer settlement.

Forests (No. 2095).—This is a comprehensive Act "to provide for the management and protection of State Forests." It establishes a State Forests Department under a Minister of Forests, with the (s. 8) exclusive control and management of all matters of forest policy, including the granting of authorities, the collection of revenue, and "the planting or thinning of forests and the marking, laying out, and maintaining of plantations and nurseries, and the distribution of trees thereon." A Conservator of Forests is made responsible to the Minister for the proper management of reserved forests, and protected forests and plantations and nurseries, and (subject to Public Service Acts) has control of all forest officers and trainers and persons employed in such forests, etc.

Various areas are designated as "permanent forests," and are not to be alienated or diverted from this use, except that authority may be granted to use for mining purposes, and that the Governor in Council may excise from such areas "any portion thereof which may be required for public use as mineral or medicinal springs, or for reservation for visitors to any waterfalls, caves, or places of natural beauty or interest, or as health resorts, or for sites for townships or State schools, or for providing roads or means of access thereto, or for irrigation purposes, or water-supply

purposes." Within a period of five years, also, the Governor in Council may excise from the "permanent forests" or from the timber reserves established under the Act any land required for settlement or any other public purpose. The powers of the Governor in Council are subject to the veto of either House of Parliament, and a curious provision requires that copies of the proposed Order of excision shall be sent by registered letter to every member of Parliament. In the case of the "timber reserves," the Minister may, after five years, propose a reduction in area and such reduction shall be carried out if both Houses of Parliament approve by resolution of the proposal. Power is also given to proclaim additional areas as permanent forests or timber reserves, and to acquire by purchase alienated lands for this purpose. Provision is also made concerning the uses to which forests and timber-reserves may be put not inconsistent with the maintenance of their character, for the prevention of fires, and for the protection of forest produce. The Governor in Council may make regulations for carrying out the purposes of the Act.

Infant Life Protection (No. 2102).—This is an Act to amend and supplement the Principal Act of 1890. It authorises the Government to establish Maternity Homes, Infant Asylums, and separate Cottage Homes for the care of infants and mothers. Regulations may be made for the management of such homes, etc., and for the fees to be paid on behalf of persons lodged therein; the accommodation to be provided in registered homes; prescribing the food to be given to and the care and management and medical treatment of boarded-out infants, and prescribed conditions as to the milk supply and the storage of milk for boarded-out infants. Inspectors are to be appointed to see to the carrying out of the Act. Application must be made to board out any infant, and before permission is given the child is to be medically examined. No child under twelve months is to be boarded out for less than 10*s*. a week while under twelve months old, or thereafter for less than 7*s*., and in no case for more than 40*s*. a week. All payments must, under penalty, be made through the Secretary of the Department. Syphilitic children are removed from the care of the registered person with whom they reside, and if not taken charge of by their parents or guardians, are to be provided for by the Department, which may recover a sum not exceeding 12*s*. a week for their maintenance. Important provisions are made concerning the death of infants in the care of registered persons. Every such death is to be reported to the Coroner, who shall hold an inquest, unless a medical man, who has attended the infant during its life, certifies the cause of death, and the Coroner is satisfied therewith. At any inquest it is the duty of the Coroner to inquire "not only into the immediate cause of death, but into all such circumstances as may throw any light upon the treatment and condition of the infant during life, and into any other matters into which, in his opinion, it is desirable in the interests of public justice that he should inquire." No such infant,

dying under the age of five years, may be buried without the authority of the Coroner. The Secretary of the Department for Neglected Children is required to make an annual report, to be laid before Parliament, of all proceedings under the Infant Life Protection Acts.

Mines (No. 2127).—This is an Act for dealing with the injury caused to land and water-courses through mining operations carried on by means of dredging and sluicing. A Board is constituted with the duty of investigating cases of pollution and damage, and the power to order the discontinuance of the acts from which the damage arises, or that measures shall be taken to avoid the mischief. No mining operations by which watercourses are liable to be polluted may be undertaken until the Board is satisfied that proper measures of prevention have been taken. In the mining districts of Ballarat and Bendego Sludge Abatement Trusts, representing the municipal councils, the owners of land liable to be injured, the registered mining companies, and all other bodies or persons carrying on mining operations within the district, are to execute the powers of the Sludge Abatement Board, and may carry out such works as are necessary to prevent pollution to watercourses or injury to land, the contributions to cost being assessed by the Trusts or the interests represented. The Act also substitutes new provisions regarding the ventilation of mines for those contained in previous Acts.

The Moneylenders Act, 1907 (No. 2110).—Last year Parliament adopted the provisions of the English Act, 63 & 64 Vict. c. 51 in the *Moneylenders Act*, 1906, No. 2061, and by it the registration of moneylenders was required and express penalties provided for default therein (s. 5). Since the passing of that Act the decision of *Bounardt* v. *Woff.* [1906], 1 Ch. 740, has been given and has negatived the right of an unregistered moneylender to recover money lent by him. The new Act (s. 3) nullifies the effect of that decision by providing that no contract or agreement or transaction entered into by a moneylender with any person or body corporate shall be void or voidable by reason only that the moneylender has, whether in connection with such contract or agreement or transaction, or not been at any time guilty of a contravention of any of the provisions of s. 5 of the principal Act. It also enables a moneylender to deduct from any loan of money all fees, costs, charges, and expenses that may be lawfully charged pursuant to the provisions of the principal Act, except interest (s. 3). And it declares that the assignments which by the principal Act are required to be executed before a police magistrate, County Court Registrar, Clerk of Petty Sessions, or an independent solicitor, are restricted to consignments to moneylenders only.

The Indeterminate Sentences Act, 1907 (No. 2106), deals in the main with the instinctive and the habitual criminal, and makes the punishment fit, not the crime, but the criminal; it makes, too, more lenient treatment of first offenders possible. By it, when any person of seventeen years or upwards is convicted of any indictable offence, having been previously

convicted on at least two occasions of any indictable offence or offences, the Court sentencing him may declare him to be an habitual criminal, and direct, as part of his sentence, that at the expiration of the term of imprisonment then imposed upon him he be detained during the Governor's pleasure in a reformatory prison (s. 4). The Court may take evidence, if it thinks fit, before making such a declaration (*ib.*).

Following on this is another section (5) dealing with the instinctive criminal who may not have been convicted previously of any other offence and yet who is often more dangerous to society in organising or inciting others, or, as a receiver, enabling them to dispose of their booty, and who is very difficult to catch. This section directs that when any person of seventeen years or upwards is convicted of any indictable offence, whether previously convicted of any offence or not, the Court may, having regard to his antecedents, character, associates, age, health, or mental condition, the nature of his offence, or any special circumstances, direct as part of his sentence his detention in a reformatory prison during the Governor's pleasure, or, without any other sentence, direct his detention in such prison during the Governor's pleasure.

A further case is dealt with in s. 6—viz. the rogue and vagabond who has been repeatedly convicted of minor offences dealt with by Courts of Petty Sessions. The Act does not give to any Court of Petty Sessions the power to give the indeterminate sentence, but it enables any County Petty Sessions, in dealing with a man who has been frequently convicted, to commit him to appear before the Supreme Court or Court of General Sessions, so that such latter Court may determine whether the indeterminate sentence should be imposed upon him (s. 6).

Prisoners who receive the indeterminate sentence in any of the above cases go to a reformatory prison set apart for them, where they work at some trade or vocation with the incentive of reward. A portion of the earnings of such prisoners is to be accredited to them, so that when they are released they may have some money to provide for themselves and will not be driven by necessity to resort to their old associates for help (ss. 15 and 16).

The administration of the Act is entrusted to an independent Board of three, called the Indeterminate Sentences Board, appointed by the Governor in Council (s. 22), and it is the duty of such Board—

(*a*) To make careful inquiry as to whether any persons in such prison are sufficiently reformed to be released on probation;

(*b*) to consult with the Inspector-General of Penal Establishments;

(*c*) to make recommendations to the Governor in Council as to the release on probation of any person in such prison;

(*d*) in making such recommendation, to have regard to the safety of the public, or of any individual or class of persons, and the welfare of the person whom it is proposed to release;

(*e*) to make certain official reports.

Generally speaking, the release on probation is for two years, and the condition of the probation is that while he remains in Victoria he must, every three months, report himself to the police, with his address and occupation, and must not associate with reputed thieves or cheats or criminals, and if such condition be broken he may be recommitted by any Court to the reformatory prison and detained during pleasure. If, on the other hand, the condition of his probation is observed he is deemed to have suffered his sentence (ss. 17–20).

Provision is made, too, in the Act (ss. 23–30) for the more humane and merciful treatment of first offenders, young in crime, enabling the Court dealing with them to suspend the execution of their sentences by releasing them upon recognisances or condition as to good behaviour for a period to be fixed by the Court and subject to the supervision of a probation officer. The English Act 7 Ed. VII. c. 17 has served for the model of these provisions as to first offenders.

His Majesty's royal prerogative of mercy is not affected by the Act (s. 33).

The Police Officers Act, 1907 (No. 2093), amends the principal Act. One of the chief clauses is s. 4. It authorises a constable who has reasonable cause to believe that any person is without lawful means of support to arrest him, with or without a warrant, and bring him before Petty Sessions or justices to be dealt with as an idle and disorderly person. For over forty years this was acted upon as being the law, but a recent decision of the Supreme Court had held it to be not lawful to arrest a person merely because a constable had reason to believe the person had no lawful means of support, and had held that the constable must first satisfy a justice that the person was without means of support before further proceedings could be taken against him. This decision made the law unworkable, and the section restores the law to what has been the former practice; and it adds that the fact that the accused can produce or prove that he possesses money or property shall not be taken into account in deciding the charge against him unless he shows that he honestly obtained the money or property.

The case of a male person living on prostitution is dealt with in s. 5, and upon information on oath before a justice that there is reason to suspect that any house is used by any female for prostitution, and that any male person residing in or frequenting the house or living, wholly or in part, on the earnings of the prostitute, a search-warrant may issue to arrest such male person. If the fact be proved the accused is liable to imprisonment, with or without hard labour, for any term not exceeding two years.

A minor penalty, of not more than £20, is also provided for the offence of letting a house for prostitution, or being the tenant of a house and wilfully being party to its use for such purposes (s. 6).

Another recent decision of the Supreme Court caused great difficulty to the police in dealing with undesirable characters, cheats, thieves, or

reputed thieves under the law as idle and disorderly persons—viz. that the Court hearing the charge was held incompetent to receive evidence of the previous character or want of character or previous convictions of the accused person.

S. 8 now permits the informant to produce evidence in support of the information to prove that the person charged is a known or reputed thief or cheat or was found in company with reputed thieves or persons having no visible lawful means of support.

S. 9 makes fortune-telling to defraud or impose on any person a summary offence, with a penalty of not more than £25, with imprisonment of not more than six months in default of payment of the fine.

An important clause is s. 10. A person sometimes has property in his possession undoubtedly stolen but impossible to identify, as *e.g.* copper, or lead, or drainards. Power is given to arrest such person, with or without warrant, and to bring him before Petty Sessions to give a satisfactory explanation of his possession of them, and subjecting him to imprisonment for not more than twelve months on his failure to give a satisfactory account as to how he came by the same. If he declares he received possession from some other person, power is given to the Court to cause such other person to be brought before it and examined, and if such latter person does not satisfy the Court that he came lawfully by the property he becomes liable to the said punishment (s. 11). The Court is further empowered to order restitution to the rightful owner if satisfactory proof of ownership is given (s. 12).

The Act further provides a penalty of not more than £25 or of imprisonment for any term not exceeding six months for publicly exposing in shop windows, stalls, or buildings, or for selling a postcard of an indecent nature or suggestive of indecency. A prosecution is not competent unless the offender has been previously warned in writing by the police that he will be prosecuted if, after the warning, he exposes or sells any such cards, and even then the written authority of a Superintendent of Police to later proceedings is made necessary.

The Gold-buyers Act, 1907 (No. 2138).—This repeals a prior Act of 1901, and is a more stringent measure than its predecessor. Gold-buying in the past had been carried on in such a manner as to lead to many unfair practices, and gold-stealing from mines was thought to be becoming prevalent, forcing the mine-owners to protect themselves by severe clauses in agreements with miners as to the right of search. This Act renders it more difficult to dispose of gold unlawfully obtained. One principle in the Act is that, with the exception of banks, gold-buyers shall not be gold-assayers (s. 6).

Gold-buyers and gold-assayers must have licences, and ss. 9–17 deal with applications for licences and renewals. The applicant must publicly advertise his intention to apply for a licence and apply to the Court of Petty Sessions nearest the place at which his business is to be carried on.

His application must be accompanied by a certificate from six reputable citizens that he is a fit and proper person to hold a licence, and by a certificate from the police that such a licence is required in the district. The Court may thereupon grant a certificate for a licence, if satisfied as to the character of the applicant and as to the necessity of the licence, and that the premises at which the business is to be carried on abut on a public street, and have a front door opening on such street for customers. Chinese and licencees, under the Licensing Acts, are not to be qualified to receive licences. The licence fee is an annual fee of 40*s*. In the case of banks, instead of each bank-manager having to apply for a licence, a general licence can be issued, if the bank prefers it, for every branch of the bank, setting out the names of each branch of the bank to which the licence is to be applicable.

Gold-buyers must have no appliances on their premises or elsewhere for crushing, secreting, or assaying gold other than a pestle and mortar, and banks alone are excepted from this provision (s. 33).

The duties of the licensed gold-buyer and licensed assayer are set forth in s. 24:

(*a*) To have his name with the words "licensed gold-buyer," or "licensed gold-assayer," painted distinctly on his premises;

(*b*) to keep a gold entry-book in a prescribed form showing all gold received, and when and from whom received, and to send a copy monthly of such entries to the Secretary of Mines;

(*c*) to show in such book fully how the gold has been disposed of;

(*d*) to allow no person buying or selling gold or bringing gold for assay or smelting to enter or leave the licensed premises except by the front door thereof;

(*e*) to produce to any member of the police, duly authorised, his books and entries and any gold then in his possession;

(*f*) to inform the police when gold, supposed to be stolen, has come into his possession;

(*g*) to keep gold five days without changing the form in which it was received.

Again, gold-buyers are not to buy smelted gold unless the seller supplies a gold-assayer's certificate showing where the gold was obtained and whether alluvial quartz or manufactured gold; and they are not to pay for gold they buy except by cheque or cash, or by placing the proceeds to the credit of the seller's account at his bank (s. 27).

The gold-buyer or gold-assayer may require a declaration to be made by any person tendering gold for sale, assay, or smelting (s. 28). Hours for business are fixed as between 9 a.m. and 5 p.m. on any week-day except Saturday, when the hours extend to 8 p.m. (s. 29). And the business of gold-buying or assaying must be only at the business premises (s. 30). No dealing is to be made with a child under fifteen years of age (s. 34).

Any person who offers gold for sale or for assay or smelting may be called upon to account for his possession of it, and, if unable to give a satisfactory account of his possession, may be proceeded against for an offence against the Act (s. 38).

The Act does not apply to sales of gold-bearing earth, tailings, concentratus, or products containing gold, but the buyer of such products is to keep a gold entry-book as if a licensed buyer (s. 5).

The Marine Stores and Old Metals Act, 1907 (No. 2092), amends the principal Act of 1890 and makes it more stringent. Robbery of old metals, such as copper boilers, brass fittings, lead, and old metal goods from houses or from mines or machinery in factories, has always been more or less prevalent, and the goods were surreptitiously taken to dealers and at once smelted down and all identification lost. The principal Act had required dealers and collectors of old metals to be registered. This new Act forbids any person to purchase old metals unless he is a licensed collector or a licensed dealer, except at public auction (s. 3).

The principal Act compelled dealers and collectors, after they had been once convicted of having in their possession wares which had been stolen or unlawfully obtained, to produce their books whenever required by the police. This new Act compels them, irrespective of any conviction having been previously recorded against them, to produce books and wares in their possession whenever required by the police; it compels them to notify the police without delay when articles come into their possession answering the description of any articles described as stolen in any printed information given to them by the police; and it compels them to keep all wares purchased by them without changing the form of such wares for a period of seven days (s. 5), thus enabling the police to trace stolen goods.

Dealers were prevented by the principal Act from carrying on business on Sundays or public holidays, but collectors were not subject to that restriction, and it was thought that on holidays the collectors of old metals had special opportunity, if dishonest, of abstracting such property, and s. 9 therefore prevents collectors, as well as dealers, from carrying on business on Sundays or public holidays. The Act also exempts from its provisions cast iron, wrought iron, or steel scrap or salvage from shipwreck (s. 8).

The Licensing Act, 1907 (No. 2103), sets right, in a schedule containing a list of minor amendments, some of the provisions of the Licensing Act, 1906. It contains also some few alterations. Under the principal Act of 1890 the number of grocers' licences could not be increased without the sanction of a local option poll, and in the Act of 1905 the section of the principal Act requiring a poll to be taken before such an increase could be had was inadvertently repealed as to grocers' licences, and so s. 3 restores the law to its original position upon that point.

S. 4 enacts that no special permit (granted under the principal Act and allowing a licensed victualler in the neighbourhood of railways and markets

to remain open for certain extended hours) shall extend beyond the year in which it is granted.

S. 5 confers on a transferee of a licence any special permit granted to the original licencee to have two or more bars on his premises, and makes such special permit expire also at the end of the year in which it is granted. If such additional bar or bars has or have been used by the licencee to commit breaches against the Licensing Act, power is conferred on the licensing Court to revoke the permit (s. 6).

In the process of reducing the number of licensed houses to the statutory number, the principal Act required every licensed victualler to be summoned to attend the Court. This has recently been found cumbrous and unnecessary, and so s. 7 limits this requirement to owners and occupiers of such houses as the *Licences Reduction Board* announces will be dealt with at any particular sitting, with liberty to others to attend, if interested, and to be heard by the Board.

S. 8 empowers the *Licences Reduction Board* to accept, if the owner and occupier of any house desire to surrender the licence, such surrender and assess compensation for the deprivation.

Lastly, s. 11 directs that, in prosecutions for trading within prohibited hours, the onus of proof that a person is a *bona fide* lodger, traveller, inmate, or servant shall rest upon the accused. The Superior Court had recently taken a view to the contrary, and this section nullifies that view.

The Trustees Act, 1907 (No. 2105), settles in the affirmative a doubt that existed as to whether an expression in a section of the Trustees Act, 1890 (No. 1105), granting a right of appeal to *any person who feels aggrieved* at any order or adjudication of magistrates in Petty Sessions would include a person who is an informant to an information charging an indictable offence or one punishable upon summary conviction, and who is dissatisfied with a dismissal made by the magistrates.

The Default Summonses Act, 1907 (No. 2081).—The system of default summons to recover debts in Petty Sessons had been introduced by the *Trustees Act*, 1904 (No. 1959), and worked well and was freely used instead of the ordinary summons; and municipalities and other local governing bodies also used it to recover rates due from ratepayers. But by the existing law municipalities and like bodies, when suing for rates, are exempt from the fees chargeable to other persons for the service of process. The police in Victoria serve the process of Courts of Petty Sessions and in serving these default summonses upon far-distant ratepayers in country districts long, and at times expensive, journeys by the police at the cost of the State were necessary. The present Act checks this, and enacts that municipalities and like bodies, when using the default summonses to recover their rates, shall pay the mileage fee ordinarily prescribed by law to be paid for service of the ordinary summons before the police are to make personal service of any default summonses for rates.

The Administration and Probate Duties Act, 1907 (No. 2089), continues for a further period of twelve months (December 31, 1907—January 1, 1909) the present rates of probate duty chargeable on real and personal property in Victoria of deceased persons, and exempts for the first time public charitable bequests of property from the incidence of such duty.

The Administration and Probate Act, 1907 (No. 2120).—This Act makes changes in the existing Law as to probate and administration. It provides, in s. 2, that an administrator with the will annexed, after he has discharged his duties as an administrator, shall have the same powers, duties, privileges, and liabilities as a trustee, unless the testator has appointed some other person to be trustee who is able and willing to act.

S. 3 provides some statutory directions to executors as to the payment of probate duty, and directs that it is to be paid out of the residue (defined as unbequeathed personality and undevised realty) unless a contrary intention appears in the will. This is thought to be more consonant with the general intentions of testators. The section directs also that if there is no residue, or an insufficient one, to pay the duty, the duty or the balance, as the case may be, is to be deducted by the executor from every devise, bequest, or legacy in proportion to its value, unless a contrary intention appears in the will. Finally it directs that where successive interests are settled by will, the total duty on the settled property is to be charged against the corpus of such property.

S. 4 in effect nullifies a recent decision of the Victorian Court upon the principal Act, that a person who under a power of attorney from a foreign executor or administrator has applied for and obtained an order affixing the seal of the Victorian Court to a copy of the foreign probate or letters of administration is in the position of the original executor or administrator so far as the Victorian Courts are concerned, and is personally bound to see to their proper administration. This section, on the contrary, allows such a person, after realising the real and personal estate in Victoria, and after discharging all local claims, to pay over to the principal or foreign executor or administrator the balance of the estate without seeing to its application.

S. 5 empowers the Supreme Court to order the discharge or removal from office of an executor or administrator, who remains out of Victoria for two years, or who desires to be discharged, or who refuses or becomes unfit to act in his office, and to appoint a substitute and make all necessary vesting orders.

S. 6 adopts for Victoria 47 & 48 Vict. c. 71 as to the escheat of real estate.

Lastly, under the existing Law, in the case of several executors being appointed by a testator, a trustee company may, with the consent of all the executors, be appointed to apply for probate instead of the executors, and s. 7 now carries this further and enables any one of several executors

to appoint such a company to take out probates jointly with the other executors; and the Court can grant probates to the company and other executors, unless the testator has in his will expressed his desire that the office is not to be delegated, or that a trustee company is not to act.

The Real Property Act, 1907 (No. 2086), deals mainly with the limitation of actions relating to real and other property. Over twenty years ago it had been held in the Victorian Courts that, if the real owner of land went out of its possession for the statutory period of limitations, the first person who went into its possession got a good title by adverse possession, no matter how short a period he had in fact possessed it. In consequence of that view the Law was altered so that where there was no adverse possessor on the land the owner was still to be deemed to be in possession. The Court, however, limited this alteration to the one case of an owner who had himself been once in possession. The present Act extends the principle adopted in the alteration that was made, and now any land not in the actual possession of any person shall be deemed to be in the possession of the person entitled to such possession. And a mortgagee of land is declared to be deemed for the purposes of this Act as from the commencement of the principal Act of 1890, to be and to have been the person entitled to such possession when and so often as default in payment of principal or interest has been made by a mortgagor (s. 2).

A curious conflict of law as to the limitation of actions to recover rent is ended by s. 3. Under the principal Act of 1890, six years is fixed as the statutory period within which actions for rent must be brought, whilst under the *Supreme Court Act* of 1890 actions for rent due under any covenant or under any deed may be brought within a period of twenty years. This was never intended, and s. 3 now declares that the rule of the Real Property Act shall obtain, and six years is now the only period within which arrears of rent can be recovered by action.

S. 4 alters the period of limitation of actions of convenant, or actions of debt upon bond, or actions upon an award, from twenty years to fifteen years.

S. 5 deals with adverse possession against the Crown, and declares that no title by adverse possession shall arise against the Crown, and whether the possession has or has not exceeded sixty years.

Ss. 6 and 7 make amendments in regard to the adjoining landowners obtaining title to land in a *cul-de-sac*.

S. 8 gives complete protection to tenants with regard to buildings and fixtures erected during the tenancy, and enacts that, unless there is a provision to the contrary in the lease, all buildings, fences, engines, machinery, or fixtures shall be the property of the tenant, and shall be removable by him during his tenancy, or during such further period of possession by him as he holds the premises, but not afterwards. The tenant,

on removing, must see to it that he does not injure the land or the buildings of his landlord, and that he puts the land and buildings in the like plight and condition as the same were in before his improvements were made.

The Ancient Lights Declaratory Act, 1907 (No. 2087).—This Act provides that after its commencement no right to the access or use of light to or for any building shall be capable of coming into existence by reason only of the enjoyment of such access or use for any period or of any presumption of a lost grant based upon such enjoyment. Accrued rights are, of course, not affected.

The Transfer of Land Act, 1907 (No. 2094), adds to the list of persons who under the principal Act may attest instruments and powers of attorney, without the limits of Victoria and so meets the convenience and necessities of persons who live in comparatively unsettled districts in the various States of the Commonwealth and elsewhere, and who at present have to travel long distances to obtain the attestation of a votary public or Commissioner.

By s. 2 the following persons are added to those authorised as aforesaid under the principal Act:

1. The Agent-General of Victoria in the United Kingdom;
2. The Mayor or other chief officer of any city or municipal corporation in any of the States of the Commonwealth of Australia, New Zealand, or other British Possessions;
3. The police magistrate, resident magistrate, stipendiary magistrate, or special magistrate, in any of the said States, New Zealand, or other British Possession;
4. The manager or accountant of any branch or any bank of issue having its head office in Melbourne;
5. The Registrar-General or Recorder of Titles in any of the said States;
6. Any other person authorised in that behalf by the Governor-in-Council.

The Friendly Societies Act, 1907 (No. 2107).[1]—On December 3, 1907, there came into operation an Act to further amend the Friendly Societies Acts, and entitled, "The Friendly Societies Act, 1907, No. 2107." Until the passing of this Act there were no statutory provisions in Victoria making it compulsory upon Societies carrying on the business of Friendly Societies to be registered under the Friendly Societies Acts, and thus come under Government control and supervision. By the Consolidated Friendly Societies Act, 1890, which was a re-enactment of the Act of 1877, it was provided that societies of not less than ten persons might be registered under it to provide by voluntary subscriptions of or levies upon the members thereof, with or without the aid of donations, for certain specific purposes enumerated in the subsections of s. 5 of the Act. Under that provision many of the recognised Orders which had originally been established in Victoria by

[1] Contributed by G. B. Vasey, Esq., Registrar of Friendly Societies.

charter from the parent bodies in Great Britain were registered, as well as others of purely local origin, but there still remained numerous societies and clubs giving sick pay and funeral benefits which had not availed themselves of the privileges of registration. By the Act of 1907, however, all such bodies are required to be registered—those then in existence, within three months from the passing of the Act, and any thereafter established within three months from the date of their establishment. Neglect to comply with this requirement of registration renders the officers of unregistered Societies liable to a penalty of £50. This compulsory registration of Societies is one of the cardinal features of the new legislation. A second important feature of the Act is the provision (s. 5) under which the registry of a Society is to be cancelled if the Society fails, when notified, to adopt a scale of contributions which, in the opinion of the Actuary for Friendly Societies, is adequate to meet the benefits undertaken to be given therefor. Formerly there was no effective means of compelling a Society, once registered, to bring and keep its scale of contributions up to an adequate rate. Now, however, it is provided that, if it appears to the Actuary that the table of contributions of a Society is not adequate, he shall notify the Society accordingly, and if he reports to the Registrar that any Society so notified has not within a limited time adopted an adequate table, it is then the Registrar's duty to cancel that Society's registry. Power is given (s. 6) to the central body of a Society having branches to appoint auditors to audit and inspect the accounts and securities of the branches, the auditors to report to the central body the result of their audit and inspection, accompanying the report by a balance-sheet signed by them giving a correct statement of the financial position of the branch and of its funds. The conditions set out in the principal Act under which registered Societies were to be unaffected by the Imperial Acts (39 Geo. III. c. 79, and 57 Geo. III. c. 19) against corresponding societies, are by s. 7 of this new Act repealed. S. 8 enumerates a wider field of selection of securities upon which the funds of Societies may be invested, and in the case of investment upon first mortgage of freehold property specific directions are given for the guidance of trustees. In this Act United Friendly Societies Dispensaries for the first time receive statutory recognition, and power is given to them to supply medicines and medical and surgical appliances under limitations mentioned (s. 10). Ss. 11 and 12 introduce amendments affecting matters of administration only.

6. SOUTH AUSTRALIA.[1]

[*Contributed by* A. BUCHANAN, ESQ.]

Acts passed—General (including one reserved from the preceding Session), 29; Reserved, 1; Private, Nil.

Constitution (*Legislative Council Franchise*).—Act 920 lowers the qualification of voters at elections of members of the Legislative Council in the case of occupiers to an actual rental of £17 per annum, and, in the case of Crown Lessees, to those owning improvements upon their leases to the value of £50.

Votes are also conferred upon special classes of people who from the nature of their avocations may not be rent-payers, namely, officiating ministers of religion, head teachers presiding in school premises, post-masters and post-mistresses, railway station-masters, and members of the Police Force in charge of their respective offices.

Coroners.—By Act 922 of 1907 a Coroner is empowered to hold inquests on dead bodies or fires without a jury unless he considers a jury desirable or a jury is directed by the Attorney-General or requested by some person interested in the subject matter or claiming to give material evidence or by a member of the Police Force (s. 2). A Coroner holding an inquest without a jury is to forward to the Attorney-General a statement in writing of his reasons for doing so (s. 3). A view of the body by the jury may be dispensed with unless required by the Coroner (s. 5), and where possible and convenient inquests are to be held at Police-stations or local or Police-court buildings (s. 8).

Juries.—Act 923 of 1907 throws upon litigants in the Supreme Court the daily cost of the jury in cases where the trial is protracted instead of, as hitherto, a fixed fee that practically covered the cost for one day only.

Distress for Rent.—Act No. 934 of 1907 exempts from distraint for rent any sewing-machine, typewriting-machine or mangle the property of or under hire to a female, provided that no person shall be entitled to have more than one of each such articles protected (s. 2), and exempts from seizure under distress for rent wearing apparel, tools and implements of trade (in addition to those under section 2) to the total value of £10 at a forced sale (s. 3); but the above provisions are not to apply when the interest of the tenant has expired and seven days have elapsed after a demand in writing for possession of the premises (s. 4).

Trustees.—Act 944 of 1907 extends the power given to Trustees by the Trustee Act 1893 by enabling a Trustee, on the sale of trust property, to take

[1] The legislation of the year 1901, being that of the second Session of the nineteenth Parliament and one Act of the preceding Session reserved for the Royal assent, is here reviewed.

a mortgage over the property sold for part of the purchase-money (s. 2); to delegate during his absence from South Australia for a term not exceeding one year all or any of his powers and discretions as a Trustee, he himself, however, remaining liable for the acts and defaults of his agent (s. 3); to authorise one or more co-Trustees to operate on the trust banking account (s. 5). Power is given to the Court, upon being satisfied that it will be advantageous to the beneficiaries, to authorise a sale by a Trustee to himself unless such sale be expressly prohibited by the instrument creating the trust (s. 7). Every executor or trustee, at the request and cost of any beneficiary, is to file annual accounts in the Supreme Court, and the Public Trustee, at the request and cost of not less than one half of the beneficiaries, is to audit such accounts (s. 8).

Traffic Regulations: *Automobiles.*—No. 938, the Motor Vehicles Act of 1907, repeals the Act of 1904 and makes other provisions for the regulation of motor traffic. A Registrar is to be appointed (s. 5) who is to keep a register of motor vehicles, distinguishing between motor cycles and other motor vehicles (s. 6). Owners are required, under a penalty of five pounds, to register their motor vehicles by furnishing particulars and payment of fees as prescribed (s. 7*a*) and shall have a number assigned (s. 7*b*). The Registrar may assign general identification numbers upon distinctively coloured plates to motor manufacturers or dealers for use on motor vehicles during trial before sale (s. 8). Plates bearing the assigned number in the prescribed size and style must be displayed so as to be easily distinguishable in the case of a motor cycle from both sides (s. 10), and, in the case of any other vehicle, from the front and rear; and numbers assigned by local licensing authorities must be distinctive in design from the number assigned by the Registrar (s. 9). The Registrar is also to keep a register of licences (s. 11) and grant licences for twelve months renewable annually (s. 13) to persons to drive motor cycles and other motor vehicles, and to manufacturers or dealers special drivers' licences available for *bona fide* employees (s. 12). Any unlicensed person driving, or any person employing an unlicensed person to drive a motor vehicle, is liable to a penalty of £10 (s. 15). Any person driving a motor vehicle must, on demand by the Registrar or any Police Constable, produce his licence (s. 16). Driving at a speed which, having regard to all the circumstances, is or might be dangerous to life or property, renders liable to a penalty of £20 (s. 17). Between half an hour after sunset and half an hour before sunrise good lights must be carried to adequately signal approach and position (ss. 18 and 19). Bells or horns must be carried (s. 20) and sounded when necessary to warn approach or position (s. 21). Driving on footpaths (s. 21) or backwards for a greater distance than necessity or safety requires is prohibited (s. 23). If an accident occurs, or is likely to occur, to any person, whether on foot or otherwise, or to any horse or carriage, the driver must stop and remain stationary as long as reasonably necessary, and must, if required, give his name and address and, if not the owner, the name

and address of the owner of the motor vehicle (s. 24). Drivers must obey the reasonable directions of any police-constable (s. 25). The Local Road authority consenting, Minister may, for the purpose of race meetings or speed-tests in particular localities on fixed days, suspend the operation of the Act and substitute special conditions (s. 23). Convictions for offences against the Act in case of a licencee render the licencee liable to suspension, and, in case of a non-licencee, disqualify from obtaining a licence (s. 27). Regulations may be made to regulate speed and otherwise carry out the provisions of the Act (s. 28).

Vermin Destruction.—No. 940 of 1907 makes provision for the simultaneous destruction of vermin during the months of January, February, and March in each year (s. 21) by requiring owners and occupiers during those months, without specific notice, to destroy vermin upon their lands (s. 24), in case of proceedings for non-compliance the onus of proof being thrown upon the defendant (s. 25).

Merchant Shipping (No. 917).—The Marine Board and Navigation Act Further Amendment Act, 1906, reserved for His Majesty's pleasure, received the Royal assent May 8, 1907. It adopts the provisions of 57 & 58 Vict. c. 60, s. 167, assimilating the remedies of the master of a ship for wages and disbursements to those of a seaman for wages (s. 6), prohibits the shipment or unshipment of goods on a Sunday (s. 7) under a penalty not exceeding £250 (s. 8), imposes penalties for unseaworthiness (s. 9), or for arriving or departing without hatches being properly secured (s. 10), provides for control, management, and maintenance of jetties and wharves by Local Government Bodies (s. 11), and for the proper lighting of wharves (s. 12).

Crime: *Habitual Criminals.*—No. 927 of 1907 provides that where a person convicted of an offence, a class included in certain categories of offences against the person (1, wounding; 2, poisoning; 3, sexual offences; 4, abortion), has been previously convicted on at least two occasions of an offence of the same class, or, in the case of offences against property, (5, robbery, extortion, burglary, etc., larceny, embezzlement, or false pretence; 6, arson; 7, forgery; 8, coinage) on at least three occasions of an offence in any of such classes, the judge may, as part of the sentence, declare such person an habitual criminal (s. 3). Previous convictions may, in addition to other authorised modes, be proved by a record or extract of a conviction certified by the officer having the custody of the records, of which judicial notice shall be taken (s. 4). Every habitual criminal, on the expiration of his specific sentence, shall be detained during His Majesty's pleasure in a place of confinement set apart for the purpose (s. 5), where he shall be required to work at some trade or avocation and offered facilities for selling or disposing of the products of his labour, of which he shall receive not less than one-half the net proceeds (s. 6). If the Governor determines that an habitual criminal is sufficiently reformed his release may be directed, when, if he remains in South Australia, he must during a period of two years

report himself personally, or by letter once in every three months, to the Commissioner of Police (s. 7). If during the two years' probation he is proved before justices to have failed to report himself, or on being charged with an offence refuses to give his name, or gives a false name or address, or is convicted of being an idle or disorderly person or a rogue or vagabond, or an incorrigible rogue, or of an indictable offence or of any offence punishable on summary conviction by imprisonment exceeding three months, he may, in addition to the specific fine or imprisonment imposed, be recommitted as an habitual criminal (s. 8); otherwise at the expiration of the two years he shall cease to be an habitual criminal (s. 9). Male and female habitual criminals shall be kept apart (s. 10). The use of alcoholic liquors by habitual criminals is prohibited (s. 11). Regulations may be made by the Governor to prescribe the mode of sale or disposal of the products of the labour of habitual criminals and the disposal of the net proceeds thereof and for discipline and management (s. 12).

Gaming.—No. 943 of 1907 is a drastic measure aimed at the suppression of gaming. Police decoys acting under orders are not to be convicted or deemed accomplices (s. 6). Being upon any street or public place for the purpose of betting or wagering renders a person liable to a penalty of £50 (s. 7). The persons in control of any sports ground attended by the public may call upon the police to remove, without a warrant, any person reasonably suspected of doing anything in contravention of the Act, and any person so removed renders himself liable to a penalty of £50 or two months' imprisonment by re-entry on the same day (s. 8). A witness other than the defendant may not claim privilege on the ground of evidence tending to incriminate, but on full disclosure becomes entitled to a certificate which frees him from prosecution (s. 9). Knowledge that premises are used for unlawful gaming is to be imputed to the owner and immediate landlord (s. 11). Totalizator investments are not to be solicited, under a penalty of £25 or two months' imprisonment (s. 12). "Faro," "Banker," "Fantan," "Two-up," "Hazard," and kindred games are declared unlawful (s. 13). Printing or publishing information regarding illegal lotteries, whether in South Australia or elsewhere (s. 14), or regarding betting, or betting on horse-races, is prohibited (s. 22); and also the selling, offering, buying, or receiving tickets, chances, or shares in such lotteries (s. 15); the forwarding money, or money parcels to the promoters (s. 17), or the exhibition of placards relating to such lotteries (s. 16), or relating to betting (s. 24), and advertising by tipsters (s. 25). In various respects the allegations in informations are made *prima facie* evidence and the burden of disproof thrown on the defendant (ss. 10 and 18). Secondary evidence may be given as to lotteries out of South Australia (s. 19). Mere tickets are made evidence of lotteries (s. 20). The playing of unlawful games in a place, or the use of a place for betting purposes, makes it a common gaming-house (s. 21), notwithstanding that it be open to subscribers or members of a club only (s. 25). The owner

or his agent (unless ignorance or absence of reasonable grounds for suspicion be proved) and the occupier of a common gaming-house (s. 26), or of premises used as a means of access thereto (s. 27), are guilty of an offence against the Act. The owner having reasonable grounds to suspect that the premises are being used as a common gaming-house, or as a means of access, may evict the occupier and determine the tenancy (s. 28), but the Supreme Court may grant relief to the tenant (s. 29). Upon affidavit of reasonable suspicion by a superior officer of police a judge of the Supreme Court may declare a place a common gaming-house (s. 32), which declaration may be rescinded by a judge of the Supreme Court on the application of the police, or on the application of the owner, tenant, or occupier upon notice to the police (s. 33). Notice of such declaration is to be gazetted (s. 34), published twice in a newspaper circulating in the neighbourhood, and served on the owner and occupier (s. 35), after which any person found entering on or leaving such premises may be arrested without warrant and, unless he proves a lawful purpose, is guilty of an offence under the Act and liable to £50 penalty or three months' imprisonment (s. 36). The owner of a house in contravention of the Act whilst a declaration is in force, and after notice thereof has been served on him, is made liable to a penalty of not less than £30 or more than £300 unless he proves he has taken reasonable steps to prevent such use (s. 38). Whilst such a declaration is in force the police have full power of entry without warrant and to break in if necessary and to seize instruments of gaming, documents relating to betting, and money and securities for money found thereon (s. 39). Obstructing the police renders liable to a penalty of £25 (s. 40), and the existence of bolts, bars, and contrivances for obstructing the police or giving an alarm, or for concealing or destroying instruments of gaming, is made evidence until the contrary is proved that the premises are a common gaming-house and the persons found therein were playing unlawful games (s. 41).

Brothels.—Act 931 of 1907 renders any person who keeps, or assists in keeping a brothel, or, being a tenant or occupier of premises, allows them to be used as a brothel; or, being a lessor or landlord or the agent of a lessor or landlord, lets premises with the knowledge that they are to be used as a brothel, liable, for a first offence, to a fine of £20, or three months' imprisonment; for a second offence a fine of £40, or four months' imprisonment; and for a third or subsequent offence a fine of £40, and to enter into a recognisance to commit no offence against the Act within twelve months, or in default six months' imprisonment; but prosecutions must be authorised by the police authority (s. 3). Any woman found in a brothel and refusing to disclose the name of the keeper, is to be herself deemed the keeper of a brothel (s. 7). Any contract to let premises as a brothel is null and void (s. 8) and the subsequent use of premises as a brothel renders null and void the prior contract to let, and entitles the landlord to recover

possession, and an innocent landlord may recover from the tenant an equitable amount by way of rent (s. 9). Police authorities may enter by day or night, and forcibly if necessary, any house *bona fide* believed to be a brothel (s. 10).

Industrial Legislation: *Factories.*—Act No. 945 (the Factories Act, 1907) is an elaborate measure of 168 sections, divided into ten parts, to consolidate and amend the law relating to factories and the condition and remuneration of industrial employment.

Part I. makes the Act apply to a defined metropolitan area, and empowers the Governor, upon resolution of both Houses of Parliament, to extend its application wholly or in part to other areas of the State.

Part II. provides the administration machinery for the appointment of officers (Div. I.), the registration of factories (Div. II.), the registration of outside workers (Div. III.), and the keeping of records and giving of notices by the occupiers of factories (Div. IV.).

Part III. defines the powers and duties of Factory Inspectors, and requires the Chief Inspector to make an annual report of a general and comprehensive character for the purpose of informing Parliament of the course and conditions of trade. Particular employers or factories are not to be referred to in the report in such a way as to admit of ready identification, but the report is to show the numbers working in factories, classified according to sex, age, and average earnings in wages and by piece-work, hours of labour, proportion of work done within factories and outside, and such other particulars as the Minister may require.

Part IV. relates to Sanitation in Factories in respect to ventilation and overcrowding (Div. I.); structural safety, healthiness, latrine accommodation, fire exits and fire prevention and extinction appliances (Div. II.); prohibiting factories from being used as sleeping-places (Div. III.); interior limewashing (Div. IV.); compliance with Board of Health requirements (Div. V.); and intervals for and the taking of meals by employees (Div. VI.).

Part V. makes special provision for bakehouses (Div. I.), dust-generating factories (Div. II.), and wet spinning-rooms (Div. III.).

Part VI. regulates the use of machinery in factories as to safeguards to be maintained (Div. I.), the placing and fixing of grindstones (Div. II.), the working of machinery by young persons and females (Div. III.), and notice of accidents and reports thereon (Div. IV.).

Part VII. contains restrictions regarding employees in factories, as to ages and working hours (Div. I.), working hours of employers or employees in any factory where any Chinese person is employed (Div. II.), medical certification of fitness for employment of persons under sixteen years of age (Div. III.), and the employment of boys and females as type-setters (Div. IV.).

Part VIII. provides for the appointment by the Governor of Wages Boards for certain specified callings (Div. I.), records of employees to be

kept by employers (Div. II.), the appointment of one-half the members of a Wages Board as representatives of employers, and of one-half as representatives of employees upon the nomination of the Minister after notice, unless one-fifth of the constituency object, in which case there is to be an election (Div. III.); the number of members to be not less than four or more than ten in addition to the chairman, to be appointed on their nomination (Div. IV.); the objects and duties of Boards as to the classification of employees, determination of rates of wages and payment for piece-work having regard to the average rates paid by reputable employers and the maximum of working hours per week (Div. V.); or may allow the employer to fix piece-work rates based on the earnings of an average worker at the wages rate fixed by the Board (Div. VI.); the licensing of aged, slow, and infirm workers, to be employed in restricted numbers at lower specified wages (Div. VII.); the duration, publication, and application of determination of Wages Boards (Div. VIII.); the suspension of such determination (Div. IX.); the powers and duties of Inspectors (Div. X.); the prohibition of (1) any wage less than four shillings a week; (2) the taking of premiums or bonuses in respect of female apprentices or improvers; and (3) the giving pecuniary guarantees for the behaviour of apprentices or improvers (Div. XI.).

An appeal from the determination of a Wages Board is given to a Court of Industrial Appeals constituted of a Judge of the Supreme Court (s. 125), to be assisted by two assessors (s. 127). Within the metropolitan area the appeal may be instituted by a majority of the representatives of employers, or of employees on the Board, or by not less than one-quarter of the employees affected, or by employers employing not less than that proportion (s. 128).

The Minister may refer any determination of a Wages Board for the consideration of the Court (s. 129). Solicitors or agents are not to be heard except by the direction of the Court, or by consent of the parties (s. 132); trade secrets are not to be disclosed (s. 133), (Div. XIII.).

Part IX. provides for the making of regulations subject to a veto by resolution of either House of Parliament, and subject to being quashed by the Supreme Court if invalid.

Part X. prescribes the legal procedure to try the title of members of Wages Boards, and validity of Wages Boards' Determinations (Div. I.) evidence provisions under which the onus is largely thrown upon the defendant (Div. II.) and as to summary proceedings and penalties (*inter alia*) for injuries received in consequence of neglect of an occupier of a factory (s. 154), for lock-outs (s. 158), and for strikes (s. 159), (Div. III.).

Scaffolding Inspection.—Act No. 935 of 1907, which is to take effect only within a defined metropolitan area (s. 2), empowers the Governor to appoint persons of at least four years' experience Inspector or Assistant Inspectors (s. 4), requires persons about to erect scaffolding exceeding sixteen

feet in height to give twenty-four hours' written notice to an inspector (s. 5); provides that scaffolding and gear must comply with regulations (s. 6); empowers the Inspector, subject to an appeal to the Minister, to give such directions as he deems necessary to prevent accidents or to ensure compliance with the regulations, and render the person refusing or failing to comply liable to a penalty not exceeding £50 (s. 7). Regulations are set out in the Schedule to the Act, but may be rescinded, amended, or added to by the Governor (s. 9).

Public Health: *Adulteration.*—Act No. 930 (the Adulteration of Wine and Brandy Act, 1907) provides that the Governor may prescribe what substances may be added before, during, or after the making of wine or brandy, and the quantities and manner of adding (s. 4), and prohibits the manufacture or sale of any wine or brandy to which any other than prescribed substances have been added (s. 3).

Bottled liquid shall not be exposed for sale as wine unless each bottle is distinctly labelled with the name and address of the bottler (s. 7), and if carbonated the word "carbonated" must appear in letters as large and distinct as any other letter on the label (s. 8). The Government Analyst, or a person authorised by him, may enter and inspect premises, and require the sale to him at reasonable prices of samples for analysis (s. 9). The certificate of the result of the analysis shall be forwarded to the Minister (s. 10) and is made *prima facie* evidence of the facts therein stated (s. 11). No beverage, unless made from grapes, shall be offered for sale under the designation of wine unless the word "Wine" be preceded in letters at least as large by the name of the other fruit or article from which it is made (s. 12). Offences against the Act render liable to a penalty not exceeding £50 (s. 13).

Vaccination Exemption.—Act No. 919 of 1907 extended until December 31, 1907, the time during which conscientious objections might be taken in respect of the vaccination of any child born before the passing of the Act. It was passed in consequence of the public feeling evoked by an attempt suddenly to enforce, after a period of lax administration, the pre-existing provisions for compulsory vaccination.

Savings Bank.—Act 925 of 1907 precludes the Trustees from investing the funds of the Bank in the securities of or guaranteed by any other States in the Commonwealth, unless a higher rate of interest or greater advantages can be thereby obtained than by investment in the securities of or guaranteed by South Australia (s. 3); power is given to establish branches throughout the State for the receipt and repayment of deposits (s. 4); to establish a "Penny Bank" department (s. 8); and to enter into any arrangements with any Savings Bank authority either within the British Empire or elsewhere for the transfer of deposits from or to other Savings Banks (s. 11).

7. WESTERN AUSTRALIA.

This will appear later in the year.

8. PAPUA.[1]

[*Contributed by* W. F. Craies, Esq.]

Ordinances passed—15.[2]

The Ordinances passed for Papua in 1906–1907, after it was taken over as a territory of the Commonwealth of Australia, were published in 1908 as a Commonwealth Parliamentary Paper (No. 168).

Papuan legislation under the new régime seems to be tentative. Two of the Ordinances passed in 1907 were repealed by other later Ordinances of the same year.[3]

Finance.—Two Ordinances (Nos. 9 and 10) were passed to supply money to wipe out deficits, 1904–1905 and 1905–1906 respectively.

No. 8 makes the appropriation for the Territorial Budget of 1907-8. The financial year ends on June 30. The amount is £40,000, divided between "Salaries" and "Contingencies."

Postal and Telegraph Services.—No. 5 repeals as to the territory the adopted Queensland Act (55 Vict., No. 15) and adopts the Commonwealth Post and Telegraph Act, 1901,[4] with certain exceptions and modifications, the chief of which relates to money orders and postal notes, whether for Australasia or the rest of the British Empire (s. 5).

Public Service.—No. 2 empowers the Lieutenant-Governor, with the advice of the Executive Council, to make rules and regulations for the good order and conduct of the public service of the territory, *e.g.* creation, abolition, and functions of departments, the classification, grading, and salaries and duties of officers. The rules, when gazetted, are to have the force of law.

Juries.—No. 7 declares that issues, whether civil or criminal, shall be tried without a jury except when a person of European descent[5] is charged with a crime punishable with death. It regulates also the qualifications of jurors, the making of jury lists, the summoning of jurors, the formation, expenses, separation, and discharge of the jury.[6]

[1] As to the position of this territory see Journal N.S. 1907, p. 337.

[2] One (No. 12), relating to an armed constabulary, was reserved for the assent of the Governor-General in Council, which was not given in 1907.

[3] No. 3 (Native Children), repealed by No. 13 (*infra*); No. 4 (Sandalwood, etc.), repealed by No. 14 (*infra*).

[4] Journal N.S. 1902, p. 255.

[5] *I.e.* "unmixed" European descent (s. 2).

[6] Where other provision is not made the Queensland rules as to jury trial apply (s. 14).

Criminal Code.—No. 4 amends the Queensland Criminal Code, as adopted for the territory.[1]

The amendment consists (1) in making murder, as defined in s. 302 of the Code, punishable by imprisonment with hard labour for life instead of death; (2) in repealing s. 305 of the Code as to murder; (3) in empowering the Court to direct sentence of death to be recorded in any case in which the Court in a capital case consider that the offender should be recommended to the royal mercy.[2]

Under the above Code "murder" corresponds to murder in the second degree, as distinguished from "wilful murder" or murder in the first degree.

Native Labour.—Two Ordinances (Nos. 1 and 11) deal with Native Labour.

"The Native Labour Ordinance of 1906"[3] (No. 1 of 1907) repeals and re-enacts with modifications the Ordinance of 1900.[4]

The Ordinance prohibits the removal of a native from Papua temporarily or permanently, except under permit in the case of certain contracts of service in fishing-boats, or as a seaman or personal attendant (ss. 8, 36). This is modified by Ordinance No. 11, which allows removal by permit of the Lieutenant-Governor with the advice of the Executive Council in cases not within the principal Act.

Natives may not be removed more than forty miles from their homes except in settled districts, in which case the limit is a hundred miles (s. 8 (2)).

The recruiting of natives as labourers is conducted under licence and supervision, and contracts of service for over three months must be in writing entered into before a magistrate (ss. 20, 23). No contract may be for more than three years, and in the cases of miners and carriers the limit is eighteen months (s. 24). The Ordinance contains detailed provisions as to ascertaining the fairness of a contract before concluding it, and as to the time and place of paying wages, the return of the labourer to his home, and reports as to death or desertion.

Deserting labourers are liable to be recaptured, punished, and returned to their employers (ss. 61-64).

A native woman may not be employed on board any vessel, nor be carried as a passenger therein unless accompanied by her "husband or other natural protector" (ss. 10, 35).

Native Children.—No. 13 (which repeals No. 7) amends the Native Children Custody and Reformation Ordinance (No. 2 of 1891). It extends that Ordinance to children only one of whose parents is a native within

[1] By Ordinance No. 7 of 1902.

[2] This clause is in substance the same as the Imperial Act (4 Geo. IV., c. 48) but includes murder. See Archb. Cr. Pl. (23rd ed.) 233.

[3] Passed September 27, 1906. Reserved and assented to by the Governor-General in Council, March 5, 1907.

[4] Journal N.S. 1901, p. 329.

the meaning of the Native Board Ordinance of 1889, and authorises the issue of mandates by a resident magistrate in the case (1) of a child either of whose parents is in gaol under a sentence of imprisonment of twelve months or more; (2) of a child deserted by either parent or either of whose parents is dead. The mandate is not issued unless the magistrate is satisfied that the child is neglected or insufficiently cared for.

Sandalwood and Rubber.—No. 14 (which repeals No. 8) regulates (1) the cutting of sandalwood or its purchase from the natives, or (2) the collection of tree-rubber, or its purchase from natives, or the tapping or cutting of indigenous rubber-producing trees.

For such cutting, etc., by a person who is not a native[1] a licence is necessary, except in the case of cutting on land lawfully occupied by him under a local Ordinance. Licences are granted and renewable at discretion and not as of right, and by magistrates, or other authorised persons, for eight or twelve months at a fee calculated at the rate of £2 per acre.

Destruction of indigenous rubber-trees, whether wilful or by careless tapping, is made punishable unless the tree is on land in the lawful occupation of the person injuring (s. 7).

The Ordinance is supplementary to others dealing with Indigenous Timber (No. 7 of 1892 and No. 2 of 1903).

Animals.—Ordinance No. 15 prohibits absolutely the introduction of rabbits, foxes, hares, and monkeys (s. 2), and the introduction of any non-domestic animals without the consent in writing of the Lieutenant-Governor (s. 3). He may also, by gazetted proclamation, prohibit the introduction of any animal or animals, or any animal or animals from certain places whose introduction would in his opinion be injurious to Papua (s. 6). The penalty for infringing the Ordinance or proclamations or regulations under it is by fine not exceeding £500, or, in the alternative, imprisonment not exceeding six months.

9. FIJI.

[*Contributed by* W. F. Craies, Esq.]

Ordinances passed—15.

Interpretation.—No. 3 adds to the Interpretation Ordinance (No. 18) of 1906[2] a definition of "native" as every "aboriginal native of Fiji, and every aboriginal native of Polynesia domiciled in that Colony."

Elections.—No. 15 amends the electoral regulations established in 1904, as to the registration of electors and the conduct of elections of certain members of the Legislative Council.

S. 3 debars from registration as voters in Suva or Levuka persons who

[1] Native includes persons partly of Papuan descent (s. 1).

[2] Journal, N.S. 1907, p. 339.

have not their usual dwelling-place in the town, and prohibits entry on district registers of the names of persons whose usual dwelling-place is in Suva or Levuka.

The time for sending in claims is extended (s. 5), and the title "country members" is substituted for "planter representatives" (s. 6).

Finance.—No. 1 provides for expenditure in excess of the appropriations of 1906. No. 11 provides for the financial service of 1908.

Government Savings Banks.—No. 4 provides for the deposit of small savings in Government Savings Banks on the security of the colonial revenue. Under the scheduled regulations the maximum deposit is £200, and the utmost that may be deposited in one year is £100, and the interest paid is 2½ per cent.

Native Tax.—No. 2 provides for the commutation at the prescribed provincial rate of commutable native tax paid by Fijians.

Pensions.—No. 13 provides for the grant of pensions and gratuities to persons who have been in the public service of the colony.

Customs.—No. 8 repeals the Customs Duties Ordinances of 1898[1] and 1900,[2] and substitutes a new customs tariff. The new tariff contains: (1) a list of specific duties, shorter than in the repealed Ordinances; (2) a general duty of 12½ per cent. *ad valorem* on articles not specified nor exempted; (3) a list of exemptions, shorter than under prior Ordinances.[3]

Police.—No. 7 imposes penalties for assaulting, resisting, refusing to assist, or personating, a member of the constabulary,[4] and gives to officers or non-commissioned officers power *without warrant* to board and search any vessel in colonial waters, if there is reasonable ground to suspect that there is on board any property stolen or unlawfully obtained (s. 4).

Roads.—No. 12 deals with the construction and upkeep of roads. It creates a central Road Board (not elective) of five members, which is to have the care of all roads, streets, and thoroughfares, proclaimed in public by the Governor, and to make new roads, etc., and generally to provide for the upkeep, etc., of public roads. Each province is to have a provincial board (also nominated) to maintain and repair the roads of the province, and supervise the construction of new roads subject to the Central Board, and to send its annual estimates of what should be spent on the roads of the parish. The Central Board submits to the Governor estimates of the sums needed for roads for the year for inclusion in the colonial budget for the year. The Ordinance further provides for the taking of land for roads and the execution of works thereon; and for aligning the roads and preventing encroachments and punishing injury or nuisance to thoroughfares,

[1] Journal, N.S. 1899, p. 517. [2] Journal, N.S. 1901, p. 331.

[3] Consular flags and insignia and Government medals or decorations are put on the free list, and church vestments, ornaments, and church building materials are taken off.

[4] The chief Ordinance is of 1905, No. 16. Journal, N.S. 1906, p. 466.

and for recovering from persons who put excessive weight or extraordinary traffic on roads the damage thereby caused to the roads (s. 37).

Animals.—No. 10 makes provision for preventing contagious diseases among stock (defined as horses, cattle, sheep, pigs, goats, dogs, and all other animals). The scheme of the Act is to authorise the Governor to make regulations (subject to disallowance by the Legislative Council) for preventing or eradicating disease, destroying infected stock, fodder, etc., for isolation, disinfection, cleansing, and the like. The cost of isolation of diseased stock falls on the owner (s. 9).

Lepers.—Ordinance No. 14 amends the Lepers Ordinance, 1899.[1] It provides for establishing segregation stations. It requires notification by householders to a magistrate of the fact that any servant in their houses is, or is suspected to be, a leper, and punishes persons who wilfully harbour or conceal lepers. Power is given to enter and search for suspected lepers. Suspected lepers are taken to a segregation station and a magisterial inquiry is held as to their condition. On the report the Governor may order the removal to an asylum of persons actually suffering from leprosy.

Further provisions are made as to the maintenance and mode of residence of lepers in asylums and for management of their property (ss. 11-15).

Native Lands.—Ordinance No. 9 amends in certain details the Native Lands Ordinance of 1905.[2]

S. 3, which relates to the tenure, etc., of native lands by Fijians according to native customs, is repealed and re-enacted with modifications (*a*) requiring disputes arising for legal decision to which the Ordinance of tenure of land among native Fijians is relevant to be settled on evidence as to native customs and usages; (*b*) allowing native owners to sell or lease land to native Fijians under the Ordinance.

S. 4 is also repealed and native lands are made inalienable otherwise than by native custom or the consent of the Governor in Council.

Leases of native lands are to be made only in a prescribed form which under the 1905 Ordinance applied only to leases to persons not native Fijians. New provisions are made for the settlement of disputes the parties to which are Fijians as to the ownership of native lands.[3] The chief changes are the substitution of Fijians named by the Governor for the native head-men as assessors, the requirement of a written record of the evidence, and the substitution of appeals to the Chief Justice for appeal to the Governor in Council.

Penalties are imposed for bribing chiefs or other natives with a view to influence decisions (s. 5).

Contracts with Natives.—No. 5 amends the Native Dealings Ordinance,

[1] Journal, N.S. vol. ii. p. 582. Fiji Revised Ordinances (ed. 1906), p. 950.
[2] Journal, N.S. 1906, p. 465. Fiji Revised Ordinances (ed. 1906), p. 978.
[3] S. 4, which repeals and replaces s. 16 of the Ordinance of 1905.

(No. iii.) of 1904[1] by prohibiting the registration of an executory contract with an aboriginal native of Fiji if it appears that the contract is not to be fully performed on both sides within one year of the making of it—unless the contract has been approved by the Governor in Council.

Indian Immigrants.—No. 6 amends in certain details the principal Ordinance regulating immigrants from India, No. 1 of 1891.[2] The principal alterations are increase of the penalties for desertion by an indentured immigrant (ss. 3, 4) and imposition of penalties on employers, foremen, etc., who assault, beat, or in any way ill-use an indentured immigrant (s. 2). Provisions are also made authorising the temporary transfer of an indentured person from one plantation to another of the same employer (ss. 5, 6, 7).

10. THE DOMINION OF NEW ZEALAND.

[*Contributed by* GODFREY R. BENSON, ESQ.]

Public Acts, 79; Local Acts, 31; Private Acts, 14.

Supply.—Nos. 1, 3, 7, 16, and 20 are Supply Acts.

New Zealand and S. African Customs Treaty Ratification (No. 2).—This Act gives permanent effect to the tariff preference which, under an Act of the previous year, the Governor had been authorised to bring into force temporarily upon the conclusion of the treaty with South Africa.

Aid to Public Works and Land Settlement (No. 4).—This Act authorises the borrowing of £1,000,000, of which £375,000 is for railway extension, £200,000 for rolling stock, etc., £350,000 for the development of back blocks, £25,000 for development of gold-fields, and £50,000 for telegraph extension.

Reserve Fund Securities (No. 5).—This Act provides for the paying-off of certain debentures, guaranteed by the Imperial Parliament, which were held by the New Zealand Government for the purpose of hypothecation from time to time, but which have now matured, and for the purchase of such other securities as the Colonial Treasurer may think fit, to serve the like purpose.

Trustees' Amendment (No. 6).—This is an Act enabling the Court to rectify the omission in a will or trust deed of sufficient provision for maintenance of beneficiaries during minority. The Act of 1891, which is amended by the Act, reads as if it had been intended to deal with this matter as well as with the matter of advancement in life, but in the most important place the words "maintenance or" were somehow left out.

Cortley Training Institution Act Amendment (No. 8).—The Cortley Training Institution is a charity for the training, for suitable trades and

[1] Journal, N.S. 1905, p. 152.

[2] Published as revised up to 1905, Fiji Ordinances (1875-1905), p. 707.

occupations, of boys and girls from the Industrial Schools near Auckland. This Act provides (*inter alia*) for the appointment of additional trustees by the Governor.

Maori Land Settlement Act Amendment (No. 9).

Rotorna Town (No. 10).—This Act abolishes the Town Council of Rotorna, and transfers the local government of that town to the Department of Tourist and Health Resorts.

Apiaries (No. 11).—An Act for the suppression of diseases of bees was passed in 1906, and the present adds to it a provision making the use of frame-hives compulsory after a certain time. But in doing this Parliament has repealed the Act of the previous year, and re-enacted it, with very trifling alterations, besides this new provision.

Police Offences Act Amendment (No. 12).—This Act again, passed to amend in slight points a recent Act (of 1904), repeals it and re-acts it as amended. The subject dealt with is the regulation of boxing contests.

Tohunga Suppression (No. 13).—"Whereas designing persons commonly known as tohungas practise on the superstition or credulity of the Maori people by pretending to possess supernatural powers in the treatment and cure of disease, the foretelling of future events, and otherwise, and thereby induce the Maoris to neglect their proper occupations and gather into meetings where their substance is consumed and their minds are unsettled, to the injury of themselves and to the evil example of the Maori people generally," and whereas (it may be added) the proceedings so described were formerly tolerated, but made subject to regulations to be made by the local "Maori Council," this Act makes it an offence to practise as a tohunga. The consent of the Native Minister is required to any prosecution. The Governor-in-Council may make any regulations he thinks fit "to enable the intentions of this Act to be carried out"—a very vaguely worded provision.

Foreign Tribunal Evidence (No. 14).—Upon the certificate of the Consul or Vice-consul of a foreign State that he believes the evidence of a person in New Zealand to be required for the purpose of any proceedings pending in a tribunal of his State, a solicitor of the Supreme Court may take that person's affidavit or declaration. A false affidavit or declaration is punishable as perjury whether the foreign proceeding, in view of which it was made, was actually pending or not.

Tariff (No. 15).—This important Act has, of course, been treated of elsewhere.

Methylated Spirit (No. 17).—This is an Act for suppressing the practice of defrauding the Revenue by purifying methylated spirit, or the like, so as to render it more or less fit for drinking.

Land and Income Assessment (No. 18).—This Act revises the rate of the "graduated land-tax" which is paid on the unimproved capital value of land under the consolidating Act (with the same title) of 1900. Under

the new scale, which is graduated in a rather complex way, the tax on the smallest properties affected, viz. those from £5,000 to £7,000 in unimproved capital value, is half what it formerly was, being now one-sixteenth of a penny in the pound of capital value; on properties of £15,000 the tax is unchanged; on larger properties it is made higher, and on properties of £200,000 (when the graduation ceases) the tax is much more than double what it was before, namely, 2 per cent.

Coal Mine Act Amendment (No. 19).

Land Tax and Income-Tax (No. 21).

Sale of Food and Drugs (No. 22).—The salient features of this Act, which replaces all previous enactments on the same subject, are that the duty of enforcing it is given to the central Government to the exclusion of local authorities, and that enormously wide powers of making regulations to secure the purity and wholesomeness of food and drugs are conferred on the Governor-in-Council.

Supreme Court Practice and Procedure Acts Amendment (No. 23).—This is an Act to validate certain orders, made by Registrars of the Supreme Court acting in the place of judges, which may not have been covered by the true interpretation of the Acts under which the orders purported to be made.

Marine Insurance (No. 24).—This is a codifying Act.

Post Office Savings Bank Funds Investment (No. 25).—This Act authorises the investment of a certain sum held by the Post Office in Government debentures issued for the purpose of public works.

Hutt Railway and Road Improvement (No. 26).—This Act empowers the Government to borrow £100,000.

Scaffolding Inspection Act Amendment (No. 27).—This Act brings scaffolding less than sixteen feet high within the provisions for inspection, prescribes that ladders used in building shall extend five feet beyond the level which they are intended to reach, prescribes automatic catches for lifts used in building, requires joists to be covered wherever there would otherwise be risk of accident, and requires reports of all accidents in building.

Indictable Offences Summary Jurisdiction Amendment (No. 28).

Police Offences (No. 29).—The offences against which this Act is directed are: false claims by tradesmen, etc., to have some appointment from the Governor or to have the patronage of the Governor or his family; the use of documents designed to have the false appearance of having a legal effect in legal proceedings; the use of words or letters calculated to import a false claim to some degree, diploma, or the like (provided that a medical practitioner may call himself "doctor" without having a doctor's degree).

Agricultural Implement Manufacture, Importation, and Sale (No. 30).—This Act amends an Act of the previous year which enabled the Executive Government to place an import duty on agricultural implements which were

"dumped" in New Zealand from foreign countries. The effect of the amendment is to place other parts of the British dominions, but not the United Kingdom, among the countries where dumping is to be prevented.

Agricultural Labourers' Accommodation (No. 31).—This Act empowers the Governor-in-Council to make regulations as to accommodation provided by their direct employers for agricultural labourers other than shearers. It is required by the Act itself that no sleeping apartment so provided shall have less than 240 cubic feet of air-space for each person, and that there must be separate rooms for eating and sleeping. Inspectors are to be appointed by the Governor to enforce the Act. Separate sleeping accommodation must be provided for Asiatics.

Government Advances to Settlers (No. 32).

Taumarunui Town Council Election Validation (No. 33).

Flour and other Products Monopoly Prevention (No. 34).—For the prevention of monopolies of flour, wheat, or potatoes, this Act constitutes a Court, consisting of the (Industrial) Arbitration Court with an additional member appointed upon the recommendation of the legally recognised Agricultural and Pastoral Societies, on the recommendation of which Court the Governor-in-Council may from time to time suspend the tariff duties on those articles. The Court may make such recommendation when it finds, upon application made to it by the Governor, that the price of the article is being raised by any combination among the holders of stocks or by any complete or partial monopoly established by any one holder, or (in the case of flour) that the difference of price between wheat and flour is greater in New Zealand than in Australia without any corresponding difference in the cost of milling.

Coal Mines Act Amendment (No. 2) (No. 35).—This Act consists of detailed provisions as to leases and licences for coal-mining or for prospecting, as to precautions in the use of explosives, as to Government inspection, closing of dangerous mines, etc.

Sea Fisheries (No. 37).—"Whereas the present system of picking oysters will, if permitted to continue, result in the destruction of the oyster-beds of the North Island," this Act (*inter alia*) empowers the Governor-in-Council to set apart any oyster fishery in the North Island as a reserve where only the Minister, or persons authorised by him, may pick oysters.

Butter Export (No. 37).—This Act prohibits the export of butter containing more than sixteen per cent. of water.

Defence Act Amendment (No. 38).—This Act (*inter alia*) imposes a fine of £5 in the case of an officer and £1 in other cases on any Volunteer absent without reasonable excuse from the annual inspection parade.

Railways Improvements Authorisation (No. 39).—This Act authorises the raising of £150,000 for improvements.

Statutes Repeal (No. 40).—The Statutes repealed by this Act are mainly local.

Hospital and Charitable Institutions (No. 41).

Infant Life Protection (No. 42).—By this Act every person who takes in for more than a week, for payment, a child under six and maintains it apart from its parents or guardians, must hold a yearly licence, granted at its discretion by the Education Department, and is made subject to Government inspection. The Act further authorises adoption of a child without its parents' consent in cases where a judge or magistrate is satisfied of the unfitness of the parents.

Local Bodies' Loans Act Amendment (No. 43).

Post Office Act Amendment (No. 44).—This Act allows the use, by persons authorised by the Postmaster-General, of recording machines, by which they can stamp postal packets, telegrams, receipts, etc., instead of affixing adhesive stamps, and which will record, for subsequent collection by the Post Office, the amounts so stamped.

Fisheries Convention Act Amendment (No. 45).

Post and Telegraph Classification (No. 46).—This is an Act reviving the scale of salaries for different positions in the postal service, which was fixed by an Act of 1890.

Education Act Amendment (No. 47).—The principal provisions of this Act concern National Scholarships in the University of New Zealand, and the special instruction of children with defective sight and hearing and other mental defects.

Tiaieri Land Drainage (No. 48).

Beer Duty Act Amendment (No. 49).—This Act exempts from duty "hop-beer" which contains not more than 3 per cent. of proof-spirit. A manufacturer of hop-beer must, however, obtain a licence.

Parliamentary and Executive Titles (No. 50).—This Act changes the title of Colonial Treasurer to that of Minister of Finance, that of Colonial Secretary to Minister of Internal Affairs, and that of Member of the House of Representatives to Members of Parliament.

Land Laws Amendment (No. 51).—This Act relates to Crown land and land for settlements. It forbids, in each case, any future granting of leases in perpetuity, and requires that land shall be let on leases for no longer than sixty-six years, but that the lessee shall at the end of any such period have the right of renewal for a further like period at a rent to be determined in a prescribed manner, which guards against his being rented upon his improvements. In the case of existing leases in perpetuity the lessee is given power to purchase the fee-simple.

Canterbury College Endowment (No. 52).—This Act grants certain land, set apart in 1876 for educational purposes which have never yet been settled, to Canterbury College for promoting "the academic study and investigation of chemistry and the physical sciences."

Public Trust Office Amendment (No. 53).—This Act empowers the Public Trustee, with the sanction of the Court, to take possession of and

administer property when it is left uncared for by its owner, or when the owner is unknown, or when it is unknown whether he is dead or alive, and in other like cases. The Public Trustee may apply the property for the maintenance of the owner's relations, but, subject to this, holds it in trust for the owner.

Rangitatau Bank Exchange (No. 54).

Public Service Classification (No. 55).—This Act appoints a Board to classify the various positions in the Civil Service in eight classes, and lays down a scale of pay for them. Existing civil servants are not to suffer any diminution of pay through the operation of the Act.

Co-operative Dairy Companies (No. 56).—This Act empowers any co-operative dairy companies to require or accept from any of their shareholders the surrender of their shares, and to re-issue such surrendered shares at any time.

Public Health Act Amendment (No. 57).—This Act provides for the establishment of sanatoriums for consumptives. It provides that where an infectious disease hospital is required the health authorities may contract with the trustees of a hospital to provide for the need. It further authorises either the local authorities or the Government to hold at any time a medical inspection of the children in any public school and to notify any disease or bodily defect to the parents of the child affected.

National Endowment (No. 58).—This Act assigns certain lands as an endowment for education and for old age pensions.

Packet Licences (No. 59).—This is an Act to regulate the sale of drink on packet steamers.

Stock Act Amendment (No. 60).—This Act abolishes a duty formerly levied upon flocks of sheep.

Bills of Exchange Act Amendment (No. 61).—This Act authorises banks to destroy old cheques, etc., after ten years.

Native Land Settlement (No. 62).—This Act provides for the disposal of Maori land which is not wanted for occupation by the Maori owner. Such land is to be sold or let on lease by the local Maori Land Board and the proceeds are to be held in trust for the owner. The Act provides also for the setting apart of lands for the occupation of Maoris who are in want of land.

Public Service Superannuation (No. 63).—This Act creates a contributory pension fund for members of the Civil Service. Contribution is to be obligatory on all persons engaged in future, optional for existing servants. The Government is to contribute to the fund and guarantee its actuarial sufficiency. Retiring allowances will be paid in cases of medical unfitness as well as of old age.

Fire Brigade (No. 64).—Under this Act the Government can require the creation of a fire brigade in any district.

Gaming or Lotteries Act Amendment (No. 65).—Among the many

provisions of this Act is one enabling the Supreme Court to declare a house to be a common gaming-house. The house will then have a placard, so describing it, affixed, and it thereupon becomes an offence for any person (except with the excuse of ignorance) to enter the house. The owner (if the house is let) may then immediately terminate the tenancy. There are stringent regulations of betting at race-meetings, and it is made an offence to make or offer any bet on any ground on which any sports are being held.

Animal Protection (No. 66).—This Act consolidates with amendments the Acts passed from 1880 for the protection of game native to New Zealand, or introduced into the Dominion by the statutory acclimatisation societies. The acclimatised game include, besides our own common game-birds antelope, moose, and hares. Besides game a number of other birds, and the opossum and tuatera lizard, are protected.[1] Weasels are also protected for the purpose of keeping down rabbits. Besides regulations to prevent the extermination of the birds and animals in question, there are also provisions to prevent the introduction of undesirable creatures or of excessive quantities of any bird or animal in any one district.

Government Railways Department Classification (No. 67).—This Act raises the scale of pay fixed in 1901. Most of the changes made are slight increases of pay.

Ngatimaru Landless Natives (No. 69).

Purangi Landless Natives (No. 70).—These two Acts grant Crown lands for allotment to certain landless natives.

Water-Supply Act Amendment (No. 71).

Reserves and other Lands Disposal and Public Bodies Empowering (No. 72).

Factories Act Amendment (No. 73).—The most striking provision of this Act is one which enacts a minimum wage for all persons employed in any capacity in a factory, viz. 5*s*. a week in the first year of employment, rising to £1 a week in the sixth and subsequent years. There are also provisions to prevent women or boys spending their intervals for meals in the room where they or others have been working. The definition of factory is extended to electric generating stations. A provision is made for public half-holidays (on the same day as the existing statutory half-holiday for shops) to be instituted or not in accordance with a local poll to be periodically taken.

Shops and Offices Act Amendment (No. 74).—This Act (*inter alia*) allows a local poll to determine on what day the statutory closing day for the shops shall be.

Counties Act Amendment (No. 75).

Maori Land Claims Adjustment and Laws Amendment (No. 76).

Appropriation (No. 77).

Divorce and Matrimonial Causes Act Amendment (No. 78).—This Act

repeals a provision of the principal Act (of 1904) which made non-compliance with a decree for restitution of conjugal rights *ipso facto* equivalent to desertion. It also adds to the permitted grounds of divorce. These were: adultery of either party, desertion by either party, habitual drunkenness or neglect on the part of either party, and attempts by either on the life of the other, and certain other offences on the part of the husband. There are now added: murder of, or attempt on the life of, a child of either party, confinement as a lunatic for (in the aggregate) ten years, without hope of recovery.

Chinese Immigrants Amendment (No. 79).—By this Act Chinese immigrants are required to pass a test in reading English, the severity of which depends on the Customs authorities and the magistrates.

V. SOUTH AFRICA.

1. CAPE COLONY.

[*Contributed by the* ATTORNEY-GENERAL *for the Colony.*]

Finance: *Appropriation.*—Acts Nos. 1 and 2 applied £261,418 and £1,205,269 to the service of the year ending June 30, 1908. Act No. 26 applies £4,980,354, in addition to £1,000,000 provided by Act No. 3, to the service of the year ending June 30, 1909. Act No. 28 applies £11,841 to meet unauthorised expenditure during the year 1906-7.

Loans.—No. 27 authorises loans to provide for the deficiency of the years 1906-7 (£648,124), and 1907-8 (980,000). Also a loan of £182,000 (mainly for advances for agricultural purposes—co-operative societies, agricultural distilleries, purchase of fustage for co-operative wineries, and jackal-proof fencing.

The Act authorises payment of the purchase price of any railway taken over by Government by the issue of consolidated or Colonial Stock—if the vendor consents. Certain moneys authorised by certain railway Acts are re-appropriated.

Revenue.—Act No. 13 suspends certain contributions to the Sinking Funds and provides for payments into the public revenue of unclaimed interest on the public debt, unclaimed, drawn, or expired Government Bonds and Stock, unclaimed Post Office Savings Bank Deposits, long outstanding Treasury drafts, and other money hitherto appropriated to the Sinking Fund.

Act No. 10 augments revenue by cancelling the free carriage of sheep dips and dipping tanks on Government Railways.

Retrenchment: Civil Service.—Act No. 7 reduces the pay of all public servants—including Ministers of the Crown and Members of Parliament

—to the uniform extent of 5 per cent. of salary and emoluments. As regards the fixed establishments of the Civil Service special statutory authority was necessary, the Courts having held—as in New South Wales—that under the Civil Service Act salary could only be reduced by way of punishment for the breach of disciplinary regulations. The only paid officials exempted from the reduction are the Governor and the Judges, and those officers who had been imported under special contracts. The Act operates for one year only, and it is specially provided that all pensions are to be calculated as if no such reductions had been made.

Act No. 37.—Retrenchment necessitated many retirements from the service which were not authorised by the Civil Service Act, and the object of Act No. 37 is to empower the Government to award pensions to retiring officers as if they had attained the full age-limit. The Act further permits gratuities instead of pensions in certain cases. The retirements provided for were voluntary, and resulted in increased economy and efficiency.

Act No. 36.—Retrenchment necessitated the reduction of working hours of daily paid men—especially in the railway department. The Act authorises the calculation of pensions as if there had been no such reductions.

A provision—not connected with retrenchment—is inserted enabling the Government, on the transfer of an officer to another Colony or Harbour Board, to arrive at working arrangements with regard to the calculation and payment of widows' pensions.

Taxation: *Succession Duties* (Act No. 33).—The Act of 1864 (No. 5) imposed succession duties varying from 1 per cent. in the case of lineal ancestors or descendants, to 5 per cent. in the case of strangers in blood; and the provision of Act No. 4 of 1895 exempting from the duty property situate in the United Kingdom or any "proclaimed" South African Colony or State is repealed.

The duties imposed by the new Act are:

1. In the case of lineal ascendants and descendants, 3 per cent.
2. Brother or sister, 6 per cent.
3. Descendant of a brother or sister, 9 per cent.
4. Other relatives or strangers in blood, 15 per cent.

The new duties do not apply to successions *accrued* before August 21, 1908.

Any disposition or devolution of property physically situate within the Colony is to be taken as conferring a succession upon the person entitled, although at the time of his death the predecessor was domiciled elsewhere than in the Colony. The Act contains special provisions with regard to shares, etc., in companies carrying on business in the Colony (s. 6) and partnership (s. 7).

Income Tax.—Act No. 21 reimposes the Income Tax, but under a tariff. The Act of 1904 will be found in vol. xiv. pp. 354 *et seq.* of this Journal. The administrative provisions are unaltered, but certain new principles are adopted.

Under the repealed law incomes under £1,000 were wholly exempted from Income Tax, and farmers were assessed like others. Under the new law all incomes over £50 are subjected to the tax, and farmers may elect to pay on the annual value assessed in the manner prescribed by the Act, instead of upon their actual farming incomes. On incomes between £50 and £100 a uniform tax of 10*s.* is imposed; and between £100 and £300 the uniform tax is £1. On incomes exceeding £300 the tax is as follows:—

If the amount of income taxable exceeds £300 and does not exceed £1,000:

(*a*) For the first £300 of such income the fixed sum is £1.

(*b*) For every £1 over and above the first £300 of such income, 1*s.*

If the amount of income taxable exceeds £1,000 and does not exceed £1,500:

(*a*) For the first £100 of such income the fixed sum of £1.

(*b*) For every £1 over and above the first £100 of such income, 1*s.*; if the income taxable exceeds £1,500 and does not exceed £3,000, for every £1 of such income, 1*s.*

If the income taxable exceeds £3,000:

(*a*) For every £1 of such income and in addition thereto, 1*s.*

(*b*) On so much of such income as exceeds £3,000 and does not exceed £10,000, for every £1, 3*d.*

(*c*) On so much of such income as exceeds £10,000, for every £1, 6*d.*

The Act deals with Companies specially and as follows:—

(*a*) For every £1 of the amount of income taxable and in addition thereto, 1*s.*

(*b*) On so much of such income as exceeds £3,000 and does not exceed £10,000, for every £1, 3*d.*

(*c*) On so much of such income as exceeds £10,000, for every £1, 6*d.*

Diamond and Copper Mining Companies are subjected to a special rate of 2*s.* in the £1.

In the Act of 1904 the definition of "income" was found to be unsatisfactory, and the new Act adopts the following:—

Income shall mean—

(*a*) The profits and gains derived from the ownership of land, houses, buildings, and other immovables within the Colony.

(*b*) The profits and gains derived from the use and occupation of land, houses, and buildings within the Colony.

(*c*) All profits arisen from interests, annuities, dividends, payable to any person out of the public colonial revenue.

(*d*) The profits or gains arisen or accrued to any person from any kind of property whatsoever, situate within the Colony; and

the profits or gains arisen or accrued to any person from any profession, trade, employment, or vocation, carried on within the Colony.

(*e*) All interest of money, annuities and other annual profits and gains derived from any source whatsoever within the Colony.

(*f*) All wages, salaries, and emoluments, of every public office or employment of profit, and every annuity, pension, or stipend payable out of the public revenue, or by any public body, person, or company.

(*g*) All profits and gains arisen from any other source whatsoever within the Colony.

This exhaustive definition covers every conceivable kind of income. It includes all the English schedules, with the addition of the drag-net clause (*g*).

The effect of another section of the Act is that under (*a*) the tax is not imposed on the annual value of land and houses *within municipalities* where the land is occupied by the owner. As regards the country districts a property tax is practically imposed, and the annual value of the land and building is taken to be 6 per cent. of the value for the time being assessed by the rural local authority—the Divisional Council—and this is to be regarded as the income derived from the ownership. Under (*b*) farmers will be charged income tax on $4\frac{1}{2}$ per cent. of the value assessed as aforesaid, which is to be regarded as the income derived from the use and occupation—the farming. *If the owner farms his own land* he will thus be charged $10\frac{1}{2}$ per cent. In the former case (ownership) in assessing the annual value the amount of any registered mortgage is deducted from the assessed value.

A farmer, as before indicated, may elect to pay on his actual income—assessed in the usual way.

When the income is under £100, the Commissioner of Taxes is empowered to grant relief on account of "age, infirmity, loss, or other cause."

Females, whether married or not, whose incomes do not exceed £300 are exempted from the tax.

When persons are married in community of property the income of the wife is to be returned as that of her husband.

Life and accident annual premiums, up to £25 only, are to be deducted from incomes under £1,000.

Income derived from "the sale of goods in the Colony, whether such goods have been delivered or have to be delivered in or out of the Colony," is subjected to the tax. So also is income derived "from any service rendered, or work or labour done, in the carrying on in this Colony of any trade, profession, or occupation, whether the payment for such services or work or labour is made, or is to be made, by a person resident in

or out of the Colony, and wherever such payment is made or is to be made."

Under the Act of 1904 the incomes of the Governor and his staff, military and naval (Imperial) officers, and officers in the Imperial service, were exempted (at least the Act was so construed in practice). The new Act confines the exemption to official salaries; and extends the exemption to consular salaries.

Income derived from extra-colonial sources remains exempt.

Transfer Duties.—Act. No. 12 reimposes the transfer of land duty tax at 4 per cent. on the purchase price (in 1896 it was reduced to 2 per cent.).

Customs.—No. 9 slightly amends the Act of 1906, and confirms the Protocol to the Customs Union Convention of 1906, agreed to at Cape Town in May last.

Licences and Stamp Duties.—Act No. 39 imposes the following *increased annual licence fees*:—

	£	s.	d.
General Dealers	5	0	0
Importers importing goods to the value of not exceeding £1,200	10	0	0
Not exceeding £ 5,000	20	0	0
„ „ £10,000	30	0	0
„ „ £20,000	40	0	0
„ „ £30,000	50	0	0
„ „ £40,000	60	0	0
„ „ £50,000	70	0	0
Exceeding £50,000	100	0	0
Agents for foreign firms £50,000	50	0	0

and £5 for each additional firm represented (the total under this item not to exceed £50 additional).

Agents domiciled in the Colony are charged with half these rates.

	£	s.	d.
Ostrich-feather dealers	10	0	0

The following *new annual licence fees* are imposed:

Commercial travellers	5	0	0
Selling tobacco by retail except under a general dealer's licence	3	0	0
Selling except under a chemist's licence *patent and proprietary medicines* (in addition to the general dealer's licence)	1	0	0
Agents for ostrich-feather dealers	10	0	0

Stamp Duties.—The following *new Stamp Duties* are imposed:

Patent and Proprietary Medicines. Where the retail value at the port of importation or place of manufacture within the Colony of the contents of

each immediately containing bottle, packet, box, etc., exclusive of the amount of the stamp duty does not exceed—

s.	d.		s.	d.
1	6	a stamp duty of	0	2
2	6	" " " "	0	4
4	0	" " " "	0	6
10	0	" " " "	1	6
20	0	" " " "	2	6
30	0	" " " "	4	6
50	0	" " " "	10	0

Over 50*s.* a stamp duty of £1.

Permits for the purchase of cartridges :

" Revolver, rook-rifle, shot cartridges," for every hundred, 1*s.* ; " Saloon, Morris tube," and the like, for every 100, 6*d.* ; other cartridges, for not exceeding 25, 6*d.* ; and for every additional 25 or fraction thereof, 6*d.*

Upon every agreement in writing not otherwise liable to stamp duty (when the agreement is constituted by a number of documents the acceptance to be stamped), excepting agreements the matter whereof is under £5 ; for the hire of services, of labourers, artificers, manufacturers, or menial servants ; relating to the sale of goods ; between master and servants for wages, 1*s.* ; upon solemn declarations made in connection with private transactions, 6*d.*

The following *increased stamp duties* are imposed :

Upon scrip certificates, scrip, or shares issued or delivered in the Colony, for every £10 of subscribed capital or fraction thereof, 1*s.*

For every registered transfer, for every £10 or fraction thereof, 6*d.*

Debentures, for every £10 or fraction thereof, 1*s.*

For every transfer—debenture not being payable to bearer—for every £10 or fraction thereof, 6*d.*

The following is the definition adopted by the Legislature of Patent or proprietary medicine :

The expression means *any medicine*

(*a*) protected in the Colony by current Letters Patent ; or

(*b*) prepared or *purporting* to be prepared from some *secret formula* ; or

(*c*) prepared or *purporting* or *professed* to have been prepared by some *secret or occult art*, whether or not the formula is, or is professed to be, secret ; or

(*d*) sold under a name or trade mark *specially registered in regard thereto* ; or

(*e*) sold under any *description* which, by use of the possessive case or otherwise, *implies or indicates proprietary rights.*

Parliament Elections.—Act No. 6 amends the Constitution Ordinance, with the result that general elections will be greatly expedited. Under the Constitution Ordinance the Upper House had to be elected before

the election of the Assembly could be proceeded with. Under the new law the elections will be proceeded with almost simultaneously, fourteen days being the maximum period permissible between the issue of the proclamations by the Governor ordering the returning officers to proceed with the elections of the Houses respectively.

After a general dissolution the Governor must proceed with the election of a new Parliament within thirty days of the date of dissolution. Under the old law there was no such constitutional safeguard. On the dissolution of either House alone the election of a new House must be proceeded with within the same period.

Under the new law a new Parliament could be elected within six weeks. One polling day is to be fixed for the whole Colony. Under the old law Grahamstown and Cape Town had special polling days.

Administration of Justice.—Act No. 25 assimilates the practice of the Superior Courts with that of the Inferior Courts with regard to the use of the Dutch language. Under the older law English was the language of the Courts. In 1884 an Act allowed a litigant to demand that the hearing in an Inferior Court should be in Dutch. In the Superior Courts, however, the Judges were not obliged to comply with such a request. Now, if either party to a suit or prosecution in a Superior Court so desires, the Court must "allow the use of the Dutch language equally with the English language at the hearing, and thereupon the parties and their counsel may use either the English or the Dutch language in the conduct of the case." The Act does not apply to the "pleadings."

Defence.—Act No. 14 enables the Governor to enrol British subjects to constitute a force of naval volunteers—a division of the Royal Naval Volunteer Reserve. The members will be liable to serve under the Admiralty throughout the world on sea and on land, and will be as completely subjected to the Naval Discipline Acts as if they were members of the Navy. Our Volunteer Acts will only apply to them when serving—with the special permission of the Admiralty—in aid of the civil power within the Colony. The necessary regulations regarding organisation, administration, enrolment, disbandment, command, uniforms, discipline, (in so far as it is not provided for by the Naval Discipline Statute) calling out on actual service, pay, property and finance, will be made by the Admiralty, with power to delegate powers to our Governor.

A volunteer sentenced to penal servitude or imprisonment exceeding six months will have the right to serve his sentence in one of our Cape Colonial gaols.

Incidental expenditure is to be defrayed out of the £50,000 contribution provided in 1898 and 1902 towards the Imperial Government annual naval expenditure.

Criminal Law.—*Usury.*—The most important measure of the Session, and the best received in both Houses, was undoubtedly the Usury Bill.

Under our Common Law the Civil Courts will relieve against usurious interest much on the same lines as the Imperial Courts grant relief under the Act of 1900. The usual rate of conventional interest is 6 per cent.; but there is no generally fixed rate of interest beyond which the borrower cannot be held liable. The Courts will not allow extortion; but, at the same time, the agreed rate will not be lightly set aside. There has been no indictment for usury in this Colony, though it is possible that it would be held that usury is a crime under the Roman-Dutch Law.

Act No. 23 has set aside all doubt as to future transactions and prohibits and *severely penalises* usury. In civil proceedings certainty is attained, and this is one of the main aims of the measure. It relieves the borrower almost against his own desires, and gives the sensitive debtor relief without exposure in the Courts by rendering the usurious transaction absolutely null and void. A threat of civil proceedings will be of no avail because a criminal prosecution would necessarily result.

The Act does not apply to "mercantile transactions between commercial men."

It applies, however—and herein it differs from the English Act—to all persons, *whether they are money-lenders or not.* It covers an isolated transaction. It is more, therefore, than a mere money-lenders Act; and none of the legal questions as to the meaning of "money-lender" that have already troubled the Courts in England can arise here.

The Act defines interest as including all charges for discount, commission, expenses, inquiries, fines, foregift, bonus, renewals, and any other charges (not being taxable, conveyancing charges, or revenue charges) and any valuable consideration for a loan of money, whether such consideration be in cash, in goods, in kind, or in any other form whatsoever. It fixes the *maximum rate of interest* (as so defined) and penalises the charging of a higher rate, thus (s. 5): "No person shall, after the taking effect of this Act, stipulate for, allow or exact in any negotiable instrument, or in any contract or agreement, whether oral or in writing, concerning a loan of money a rate of interest greater than—

(*a*) 20 per cent. per annum where the total amount of money lent by one person to another within any period of three months does not in the aggregate exceed £10;

(*b*) 15 per cent. per annum where the total amount lent as aforesaid does not exceed £20:

(*c*) 12 per cent. per annum on any loan exceeding £20; *and every person who contravenes the provisions of this section shall be liable, upon conviction,* to a fine not exceeding £100, or, in default of payment, to imprisonment with or without hard labour for a term not exceeding one year, or to both such fine and imprisonment.

In all written contracts full particulars must appear, the Statute enacting in s. 3 that—

In every negotiable instrument, and in every contract, agreement, or other transaction in writing for the loan of money executed or entered into after the taking effect of this Act, there shall be separately and distinctly set forth upon the document the capital sum actually lent or advanced, the rate of interest promised or paid in respect of such loan, and the period of the loan. Where, by way of interest, consideration other than cash is given in any such transaction as aforesaid, the nature and value of such consideration shall be clearly expressed on the document. The provisions of this section shall apply to renewals of any loan, but they shall not apply to the instruments commonly known as covering bonds, nor to the legitimate operations of any registered Friendly Society or *bona fide* Building Society.

The Court may reopen transactions and accounts, s. 9 providing as follows:

In any suit, action, or other proceeding concerning a loan of money made after the taking effect of this Act, wherein it is alleged, or wherein it shall appear, that the amount of interest promised, paid or claimed, exceeds the rate allowed by this Act, the Court shall reopen the transaction and take an account between the parties, and may, notwithstanding any statement or settlement of account, or any contract purporting to close previous dealings and create a new obligation, reopen any account already taken between the parties, and shall relieve the person under obligation to pay from payment of any sum in excess of the said rate of interest; and, if any such excess has been paid, or allowed in account by the debtor, may order the creditor to repay it and may set aside, either wholly or in part, or revise or alter any security given in respect of the transaction: provided that no final payment or settlement shall, by reason of excessive interest being charged, be disturbed or reopened after a period of two years from the date of such final payment or settlement.

The following sections deal specially with negotiable instruments:

No person shall stipulate for, allow, or exact as a charge or reward for endorsing a promissory note or other negotiable document, or for giving any guarantee in respect of such document, a rate which, taken together with the interest and other charges involved in discounting such document, will make up in all more than 15 per cent. per annum upon the amount of principal stated in such document, and every person contravening the provisions of this section shall be liable, upon conviction, to the penalties prescribed in s. 5 of this Act (s. 6).

The *bona fide* holder for value, before maturity, of any negotiable instrument discounted by a preceding holder at a rate of interest exceeding that authorised by this Act, may nevertheless recover the amount thereof, but the party from whom it is recovered may reclaim from such preceding holder any amount paid thereon for interest in excess of the amount allowed by this Act (s. 12).

The partly retrospective operation of the Act is provided for in the following sections:

The principal of any sum of money lent, due and payable before the date of the taking effect of this Act, in virtue of any negotiable instrument, or of any contract or agreement entered into in respect of money lent, shall not, from and after the said date, bear a rate of interest greater than 15 per cent. per annum on loans exceeding £10 and 20 per cent. per annum on loans below £10 for a period

of one year after the taking effect of this Act, after which date the interest specified in s. 5 shall apply, and any person contravening this section shall be liable, upon conviction, to the penalties prescribed in s. 5 of this Act (s. 13).

In the case of any such negotiable instrument made before the taking effect of this Act and maturing after the said date and, in the case of any such contract or agreement made before the taking effect of this Act and to be performed after the said date, the foregoing provisions of this Act, including those as to the rate of interest in the preceding section contained, shall apply only from the date of the maturity or performance as the case may be (s. 14).

The principle of the Act is applied to interest on accounts for goods sold on credit:

The provisions of this Act shall apply to every negotiable instrument and every contract, agreement, or other transaction, whether oral or written, in which interest is stipulated for, allowed or exacted, upon the purchase price of goods sold, or the purchase price in any contract of sale or the balance thereof, which may at any time be outstanding (s. 15).

And the following transactions are not *overlooked*:—

If any person purchases goods or stock at a certain price, on the condition that the seller is entitled at some future time to re-purchase such goods or stock at a higher price, the transaction shall be regarded as a loan of the amount of the lower price, and the excess of the higher price over the lower shall be treated as interest on the lower price, and shall be subject to the provisions of this Act (s. 16).

The Court may relieve at the instance of the debtor, and similar relief will be granted in insolvency proceedings:—

Any Court in which proceedings might be taken for the recovery of money lent, shall have and may, at the instance of the borrower or surety, or other person liable, exercise the like powers as may be exercised under the last preceding section hereof, and the Court shall have power, notwithstanding any provision or agreement to the contrary, to entertain any application under this Act by the borrower or surety or other person liable, notwithstanding that the time for repayment of the loan, or any instalment thereof, may not have arrived (s. 10).

On any application relating to the admission or amount of a proof of debt in any insolvency proceedings, the Master of the Supreme Court or the Resident Magistrate may exercise the like powers as may be exercised under s. 9 of this Act when proceedings are taken for the recovery of money (s. 11).

The following protective enactment is included:—

If any person by any false, misleading, or deceptive statement, representation or promise, or by any dishonest concealment of material facts, induces or attempts to induce any person to borrow money or to agree to the terms on which money is borrowed or is to be borrowed, he shall be liable, upon conviction, to the penalties prescribed in s. 5 hereof (s. 7).

And the following saving clause:—

Nothing in this Act shall operate to increase the rate of interest that may

be recovered in any case where by law the rate is fixed at less than the rate allowed by this Act, or to derogate from any power or jurisdiction which any Court of Law may at present possess, or to prevent such Court from reducing the rate of interest claimed in any suit before it, even when such rate is 12 per cent. per annum or less than 12 per cent. per annum if the Court is satisfied that under the circumstances such rate is unreasonable (s. 17).

The Act does not apply to the statutory interest under the Pawnbrokers Acts or to bottomry and respondentia bonds.

Bogus Loans Companies.—Another evil combated by the Legislature is the formation of bogus loan companies and so-called building societies and companies issuing loan bonds in consideration of the payment of premiums. Act No. 30 requires a substantial deposit with the Treasury, and the Act applies wherever the company may be domiciled; and it suffices that any bond is issued to any person in this Colony, or that any attempt is made to secure business here. "Companies" domiciled here must deposit £5,000—if domiciled abroad a deposit of £10,000 is required.

Local Government.—Act No. 32 empowers Municipalities to contribute towards hospital and charitable—undenominational—institutions beneficial to the inhabitants; also to libraries, museums, and art galleries.

Harbours (Act No. 38).—The control of the harbours of Port Elizabeth, East London, and Table Bay is transferred—with all property and powers—to the Government. At the date of the Act the respective Harbour Boards were the governing bodies. They consisted—each—of three members nominated by the Government, the Mayor of the Municipality, a nominee of the Chamber of Commerce, and two members elected by importers (who voted according to the value of their respective importations calculated on the amount paid in wharfage dues).

Under the new Law Government will be assisted by an advisory Board elected for each harbour. Each Board will consist of one member nominated by the Municipality, one by the Chamber of Commerce, two by Government, and two will be elected by importers each of whom will have votes according to the value of his importations.

The ox-wagon has proved a disastrous competitor in some of the rural districts possessing developing lines of railways. The Act empowers a differentiation between wharfage dues on goods conveyed to ultimate destination by rail and those conveyed by ox-wagon, the object being to induce importers to abandon the ox-wagon in favour of the Government Railways.

Game.—Act No. 11 amends in some, and renders clearer in other respects our Game Laws. It defines "royal game" as meaning *elephant*, rhinoceros, *hippopotamus*, giraffe or kameelpaard, *buffalo*, *eland*, *koodo*, *hartebeest*, *bontekop*, *blesbok*, *gemsbok*, *riet-bok*, klipspringer, *zebra*, *quagga*, *Burchele zebra*, *gnu*, and *wildebeest*.

In addition to the Governor's special permit required under the old Law,

a Royal Game Licence is now rendered necessary to entitle one to shoot royal game—under the old Law only those animals whose names are above printed in italics were included in the definition of royal game. The Royal Game Licence fee is £3, but for persons domiciled outside the Colony the fee is £25; unless they own land here, in which case a fee of £3 entitles them to a licence to shoot on their own land only.

A landowner domiciled in the Colony need not take out a licence for shooting on his own land by himself and children.

The hunting of cow elephants and hippopotami is prohibited; and no elephant, male or female, whose tusks each weigh less than 11 lb. may be hunted.

An export duty of 20 per cent. *ad valorem* is imposed on the horns and skins of royal game and elephants' tusks; and no tusk weighing less than 11 lb. may be exported.

All game (whether royal or not) is to be captured by *shooting only*, unless the Governor specially authorises hunting in another specified manner. Landowners, however, in the necessary protection of their crops, may in any manner destroy animals damaging their property.

On the recommendation by the local authority, the Governor may prohibit hunting of any kind of game at night.

The local authority may prohibit the sale of game in its area, except by landowners and farmers.

An annual tax of £5 is imposed on greyhounds.

Agriculture—Animals' Diseases.—Act No. 31 empowers Government to proclaim areas in which tick-infested cattle must be kept off public roads till the animals are cleansed.

Act No. 17 is intended to protect the importation and spread of East Coast Fever by empowering Government to erect fencing on private lands, and to proclaim cordons in which the animals named in the Proclamation may not remain or be introduced. The Governor may also close public roads.

Act No. 4 is aimed at protecting bees against injurious birds and insects, and empowers the Governor to prohibit the importation of such birds and insects as he may by Proclamation specify.

Act No. 34 prohibits the export of Angora goats.

Act No. 20. This relieves local authorities from certain disabilities with regard to the cutting down of trees, the planting of which was assisted by Government Grant.

Act No. 22. This Act empowers the Governor, by Proclamation, to prohibit the sale and the export of bulbs or roots of flowers and plants which are becoming scarce in the Colony.

Wine—Beer.—Act No. 19 amends the Act of 1905 (No. 42) which regulated the manufacture and sale of wines, brandy, and whisky with the object of ensuring the placing on the market of a pure article. The main provisions of the amended Act will be found on pp. 477 *et seq.* of No. 16

of this Journal. The restrictions with regard to the ingredients of wine are rendered more severe.

After January 1, 1909, whisky may not be sold—whether imported or manufactured here—as "malt whisky" unless it is derived *solely from malt by pot-still distillation.* The Act of 1905 did not deal with beer. Under the new Act no beverage may be sold as "beer" unless it consists of the *alcoholic liquid obtained by fermentation of a mash of malt, with or without cereals, flavoured with hops.* The prohibition applies equally to imported beers, but already imported beer will be exempted up to March 31, 1909, and Colonial beers up to December 31, 1909; but in brewing here after the date of the Act not more than 25 per cent. of sugar may be added to the mash.

The Act also controls the manufacture, sale, and importation of vinegar.

University Degrees.—Act No. 5 empowers the Cape University to grant degrees in Divinity.

Dutch Medicines (Act No. 35).—A number of drugs are sold in the Colony under the name of Dutch Medicines. No apothecary's licence is required for their sale, and many are poisons. Others consist almost wholly of alcohol or other volatile spirits flavoured. The Act prohibits the sale of these latter by ordinary shop-keepers except for *bona fide* medicinal purposes. The object of the Legislature is not revenue under the Licensing Acts, but the prevention of these dangerous drugs being so easily and universally available.

Railways.—Act No. 15 provides for the completion of the line of railway connecting Hamilton with Beaconsfield under an agreement entered into between the Cape, Natal, Transvaal and Orange River Colony Governments, and regulates the rates for over-sea traffic from the ports of the contracting parties.

Concentration Camps (Act No. 16).—In 1900 an Act was passed empowering the Government to expropriate ground in which men who fell in the late war were buried—independently of the side on which they fought.

The new Act applies this Act to land in which were buried the inmates of burgher concentration or refugee camps.

Education.—No. 45 is confined to financial matters and relieves the Government from certain financial liabilities.

Native Locations.—Act No. 44 prohibits the establishment of location by private persons on their property without the consent of Government. The object of the Act is mainly a public health one, and to ensure a proper supply and distribution of water.

Trek-paths.—Act No. 43 provides for the ascertainment, protection, and control of trek-paths, resting-places, watering rights, and other servitudes in favour of the public over private property, and whether constituted by long usage or agreement. The rural local authority is vested with the administration of the Act.

Crown Lands.—Act No. 42 more or less technically amends the law relating to the grant and disposal of and prospecting for water on Crown lands.

Light Wines.—Act No. 40 empowers the Licensing Courts to grant licences for the sale for consumption on the premises of colonial-made wines, the alcoholic strength of which must not exceed 14 per cent. by volume.

The Bill introduced into the Lower House provided for the issue of such licences independently of local option. The Bill met with considerable opposition and eventually was passed on an amendment being accepted that local option should apply at the expiration of the first year and to the renewals of lapsed licences. In the Upper House the Bill was opposed with greater determination, and the Bill was passed after the licences were subjected to the general local option provisions of the Liquor Licensing Laws. The result is that a licence cannot be granted unless the application is supported by a memorandum signed by a majority of the rate-payers in the district.

The object of the Government was to encourage the drinking of light wines in preference to the stronger liquors and spirits, and to afford the same facilities for the sale of the country wines as exist on the Continent.

Local and Private Acts.—Act No. 8 provides for the disposal of certain native reserves in Bechuanaland and the resumption of a portion of a railway grant.

Act No. 18 confers additional powers on the Municipal Council of Kimberley with regard to regulating objectionable buildings, contributions to hospitals, and pensioning municipal officers.

Act No. 24 provides for the division of Cape Town into wards for election purposes, the increase of the number of councillors, and certain other matters.

Act No. 29 confirms the sale of certain Crown lands in the division of Carnarvon.

Act No. 41 deals with the allotment of certain agricultural lands in Tembuland.

2. NATAL.

[*Contributed by the* ATTORNEY-GENERAL.]

Insurance (No. 1).—No clause in a policy of Life Insurance in Natal in restraint of military service shall be a defence to a claim under that policy *if the person insured is called out upon active service in the Colony.*

Indian Immigrants (No. 2).—The Act provides for the registration by both parties to a marriage under Indian rites, either before the Magistrate or the Protector of Indian Immigrants. Should the woman be under the

age of eighteen years the duty of registration falls upon her parents. Further, if the parents have promised an Indian girl in marriage, and have received presents from the intended husband, they are liable to action if they fail in any way directly or indirectly to carry out their engagement. Indians living in the Colony, and having been married before the Act came into force, are allowed to take advantage of this Act. Registration under this Act legalises a marriage which would not otherwise be recognised by law.

No. 3 permits the Crown to take action in cases of the harbouring or employment of Indian immigrants who have deserted from their employer, and makes provision for payment of costs.

Fencing (No. 6).—This Act is to be read with the Fencing Law No. 30 of 1887, and was passed for the purpose of preventing the spread and contagion of the cattle disease known as East Coast Fever. It empowers Government to fence any land that they may think necessary to be fenced, and the cost of such fence shall be a first charge upon that land. On the Minister of Agriculture notifying the Registrar of Deeds of the fact that any land has been fenced by the Government, he must register the fact, and the charge thus created will take preference of any other mortgage which may then be in existence. Yearly repayments of the costs are arranged on the plan of instalments. An owner can, if he so wishes, contribute material or labour or transport towards the erection of such fence, which must be set off the cost of the fencing. The Minister of Agriculture is also empowered to fence any road, public or private, or any boundary of the Colony. Repairs to the fences when once made are to be borne by the owner of the land upon which the fence has been erected.

East Coast Fever (No. 8).—This Act amends Act No. 32, 1903, and authorises the Minister of Agriculture to take any cattle from an area infected with East Coast Fever and dispose of them for immediate slaughter, but the owner of the cattle is given the right to dispose of such cattle proposed to be taken under the Act if he does so within seven days of receiving notice of the Government's intention. The Act also sets forth a schedule of the rates to be paid by the Government for cattle taken under the powers conferred by the Act.

Natal Law Society (No. 10).—This Act incorporates the Natal Law Society and recognises it as a legal body. It defines the constitution and objects of the Society, and also confers rights of supervision over the legal profession in Natal, and lays down rules for the guidance of advocates and attorneys. The Society has power under the Act to make application to have practising advocates and attorneys struck off the rolls by an Order of Court for unprofessional or unlawful practice, and has power to make regulations and by-laws for carrying out the powers thus given to them. It also exempts members of the council from liability to any action or proceeding for libel, defamation, and slander in the *bona fide* execution of their duties as members of the council.

Dealers in Old Metals.—No. 11 defines the term "old metals," and provides that from the taking effect of the Act, all dealers in old metal shall be compelled to take out a licence. It also provides that any old metal bought by a manufacturer shall be registered in a register to be kept on the premises, and that the metal so bought by a dealer shall not be smelted down or otherwise disposed of within a period of seven days of the date of purchase. No dealer is allowed to purchase from a person under the age of eighteen years. The Act also sets forth a schedule of the minimum weights that may be purchased by a dealer in old metal.

Smoking by Youths (No. 13).—No person under the age of sixteen years may smoke tobacco in any form. European police officers have the right to take any tobacco, pipes, cigars, cigarettes, etc., found in the possession of any such person and confiscate same. This power is also given to teachers in schools. No person shall be allowed to supply, sell or give any tobacco, etc., to a person under the age of sixteen years without a written order by the parent, guardian or employer of such person.

Tuberculosis.—No. 14 amends Act No. 27, 1899, by providing that cattle imported into Natal by sea must be accompanied by certificates given by qualified veterinary officers approved of by the Minister of Agriculture. Cattle imported by land are required to be placed in quarantine and tested for tuberculosis, and shall not be released from quarantine until receiving a certificate from a Government Veterinary Office. In the event of any such animal being affected with tuberculosis it shall not be removed alive from the quarantine station, but shall be destroyed there, provided that in the case of animals imported by sea, the owners may reship the same.

No. 15. To amend the Lungsickness Prevention Act, 1894. Defines the words "owner" and "lungsickness." Inspectors may be appointed by the Minister. It repeals s. 8 of the principal Act, and makes a provision for the issue of a licence to keep an infected herd, and creates a penalty for removing them. It alters the law as to giving notice of an outbreak of lungsickness, and alters the schedule of compensation which is to be paid for animals.

Master and Servants.—No. 21 amends the Master and Servants Ordinance No. 2, 1850, by bringing within the operation of the Act craftsmen or labourers.

Police.—No. 22 enables the Governor to place the Reserve Force of the Natal Police, or any portion of same, under the control of the Commandant of Militia.

Registration.—No. 23 amends Law No. 5, 1890, and Law No. 6, 1891, raising the duty to be paid on transfer of lands from 2 to 3 per cent.

No. 24 amends Law No. 34, 1895, and the Immigration Trust Law of 1874, and Act No. 17, 1902, as regards the constitution of the Indian Immigration Trust Board.

No. 25 amends Law No. 25, 1891, as to the appointment of Medical Officers for the purposes of the Indian Immigration Laws.

Corporations.—No. 26 gives certain powers to the Town Council of the City of Pietermaritzburg with regard to licences, buildings, and the laying-out of roads, in order to bring the law into line with that applicable to the Borough of Durban.

No. 27. This Act establishes a Loan Fund for the purpose of promoting the occupation, cultivation, and improvement of agricultural and pastoral lands. The money voted for this purpose is to be kept by the Treasurer. The Loan Fund is to be controlled by a board consisting of five commissioners, appointed by the Governor, and a manager and certain other officers. It provides also for the making of a yearly statement and the keeping of books and accounts, and audit. Advances from the fund are to be made to farmers and landowners for the purpose of paying existing liabilities, irrigation, fencing, clearing, planting, building, and stock. No loan is to be made except upon the security of land held by other tenure than leasehold. No loan shall be for a less amount than £50 or for a greater amount than £1,500. The rate of interest to be paid on these loans is to be fixed by the Governor. The loans are to be of two kinds, either a loan for a limited period not exceeding five years, repayable at the end of that period, or an instalment loan for a period not exceeding thirty-five years, repayable by instalments during that period. It sets forth the form of mortgage and gives the Governor certain rights of foreclosure. All securities are to be in favour of the Board, and no advance is to be handed over before the security is complete. No person having any pecuniary interest in land tendered as security for a loan shall in any way be connected with the management of the loan fund. The Governor is empowered to make regulations as regards the meetings of the Board, the duties of commissioners and officers, the forms to be used, the fees to be charged, and all matters concerning the proper carrying out of the Act.

No. 28 amends the Agricultural Development act, 1904, by providing for transfer of land in freehold after fifteen years, subject to conditions of payment and occupation.

Ostriches.—No. 29 forbids the exportation of any ostrich or ostrich egg to any place other than a county of South Africa having similar legislation, unless in the case of eggs the contents shall have been removed or rendered unfertile.

No. 30.—This Act provides the funds necessary for the expenditure authorised by No. 6, 1907, and No. 8, 1907 (East Coast Fever).

Quit Rent.—No. 31 fixes the quit rents payable on lands in the northern districts and brings the law into conformity with that applicable to quit rents on land in the rest of Natal.

No. 33.—This Act provides for establishing a force of Naval Volunteers. The force is to form a division of the Royal Naval Volunteer

Reserve, and shall be liable to serve outside the territorial limits of the Colony and to be subject when on actual service or serving on any of His Majesty's ships, to Imperial Statutes relating to naval discipline, and Admiralty regulations. The rates of pension, compensation, and gratuities to be paid in case of death or injury on active service are to be the same as those paid to members of the Colonial Militia. The expenditure in connection with the Act is to be defrayed from the annual contribution to His Majesty's Navy under Act No. 5, 1903.

3. ORANGE RIVER COLONY.

[*Contributed by* W. R. Bisschop, Esq., LL.D., *Lecturer in Roman-Dutch Law to the Council of Legal Education.*]

Ordinances (Lieutenant-Governor in Council)—31 ; Private Ordinances—5.

Fencing.—No. 1 provides for the control and maintenance of fences on the boundaries of the Colony. The control of the boundary fencing rests with the Director of Public Works, who, for the purpose of exercising his duty, is allowed to enter upon any land situated on or adjoining the boundary.

Regulations for the control and maintenance of the fencing shall be made by the Lieutenant-Governor.

Solemn Declarations.—No. 2 amends the law relating to solemn declarations and sets out the form in which such declarations shall be henceforth made and subscribed.

Survey.—No. 3 provides for the taxation of surveyors' bills of costs.

Administration of Justice: Jury.—No. 4 amends the Jury Ordinance, No. 17 of 1902 (Journal, N.S. vol. iv. p. 384), by setting out the new radius within which the jurymen shall be elected, and by ordering new jury lists to be framed after the first circuit of 1907.

Resident Magistrates.—No. 7 amends certain provisions of the law relating to Resident Magistrates and Assistant Resident Magistrates, authorising them to hold Court at any appointed place in their district, and to appoint Detached Assistant Resident Magistrates to act and hold Court at more than one place within the local limits assigned to them. Civil actions to be heard in Court before such Detached Assistant Resident Magistrates, if the defendant lives within such local limits, unless the defendant elects to be summoned before the Resident Magistrate himself.

No more agents to be admitted as agents of the Court of the Resident Magistrates unless qualified before October 1899, and articled clerks to appear in Court under certain conditions.

Justices of the Peace.—No. 11 amends and extends the authority of special Justices of the Peace.

Interpretation and Revision of Laws.—No. 13 further corrects certain

verbal errors in the existing statutory laws in addition to those mentioned in the Schedule to the Correction of Verbal Errors in Laws Ordinance No. 1 of 1905 (Journal, N.S. vol. vii. Part II. p. 486), and in Schedule B of the Interpretation and Revision of Laws Ordinance, No. 27 of 1906 (Journal, N.S. vol. viii. Part II. p. 359).

Pensions.—No. 5 amends s. 3 of the Pensions Ordinance, No. 23 of 1904 (Journal, N.S. vol. vii. Part II. p. 490).

Natives.—No. 6 provides for the management of native reserves. Native reserves shall be created and limits determined by the Lieutenant-Governor by proclamation. For every such reserve the Lieutenant-Governor shall nominate a Board of Management to consist of nine persons, all of whom—with the exception of the Chairman and Vice-Chairman—shall be coloured persons, the membership to be for a term of three years. The Chairman and Vice-Chairman shall be white persons. No meeting of the Board shall be held unless either the Chairman or Vice-Chairman be present, and the Chairman or Vice-Chairman shall preside at the meeting of the Board, of which four members shall form a quorum.

The duties of these Boards shall be as follows, viz. to keep the main roads in the native reserves in sufficient order and repair, to erect fences on the boundary of the reserve and to have and exercise for that purpose the status of landlords under the fencing laws of the Colony, to make all necessary flues, water-courses, drains, sewers, and bridges, to construct all works which may be deemed necessary for the proper supply of water for the inhabitants of the reserve, to provide a proper sanitary service for the community, in consultation with the Director of Education to establish or supervise any school for the industrial or technical education of coloured persons, and for the purpose of providing the means for carrying into effect the provisions of this Ordinance to levy an annual tax not exceeding £1 in any year on each coloured male person resident within the reserve between the ages of sixteen and sixty.

Every Board shall have the power to make regulations and amend them and to see to their being duly observed, and to punish any contravention with a fine not exceeding £2, or in default of payment imprisonment with or without hard labour for a period not exceeding two months. These regulations may be for the sanitation of the community, the grazing and watering of cattle on common land, the supply of water, the repair and maintenance of roads, the erection of dipping tanks, the establishment of burial places, the prohibition of moving dangerous animals, the abatement of nuisances, the prevention and extinction of fires, in short, to the general good order and government of the community and protection of the rights of its inhabitants.

Such regulations shall be forwarded to the Colonial Secretary, and submitted to the Lieutenant-Governor for his sanction, amendment, or rejection. After their sanction they shall be published in the *Gazette* and

have force of law from the date of such publication until they are altered, amended, or repealed.

Fines under the regulations shall be prosecuted in the Courts of the Resident Magistrates or special Justices of the Peace. But all fines paid on account of such prosecution shall be paid to the Board.

No. 12 exempts certain distinguished coloured person from certain disabilities while visiting the Colony. Such exemptions are to be granted by the Lieutenant-Governor at his discretion by the issue of a certificate. Such certificates are to be applied for by the coloured person to the Colonial Secretary.[1]

No. 28 repeals Chapter LXX. of the Law Book and consolidates and defines the law regarding registration of, and control over, coloured persons on mines and diggings.

Customs.—No. 8 imposes duties on the export of Angora rams and ewes unless such exportation takes place to another Colony or territory in South Africa which has by Statute similarly provided for the imposition of a duty on the export of Angora rams and ewes.

Licences.—No. 10 amends the Liquor Ordinance, No. 8 of 1903 (Journal, N.S. vol. vi. Part II. p. 402), relating to liquor licences on railway stations and in theatres, sets out the conditions under which lessees or keepers of refreshment rooms on railway stations and in theatres can apply and obtain licences for the sale of intoxicating liquors. The provisions are set out in which such licences can be granted, and authority is given to extend the time for the sale of liquor licences in certain instances.

Medicine, Dentistry, and Pharmacy.—No. 14 amends the Medical and Pharmacy Ordinance, No. 1 of 1904 (Journal, N.S. vol. vii. Part I. p. 168), and makes new provisions for the meetings of the Council and for the practising of a *locum tenens* under the registration licence of a registered medical practitioner. It also amends the provisions of the principal Ordinance in respect of poisons.

Coal Tax.—No. 15 amends the Coal Tax Ordinance, No. 25 of 1903 (Journal, N.S. vol. vi. Part II. p. 405), enacting that the Lieutenant-Governor may determine the amount of the coal tax.

Bloemfontein.—No. 16 amends the Bloemfontein Municipal Ordinance, No. 35 of 1903 (Journal, N.S. vol. vi. Part II. p. 405), and the Amendment Ordinance, No. 19 of 1905 (Journal, N.S. vol. vii. Part II. p. 490).

Public Education.—No. 18 amends the Public Education Ordinance, No. 29 of 1905 (Journal, N.S. vol. vii. Part II. p. 491).

The amendments regard particularly the levying of an educational tax of 10*s.* on every male person of and above twenty-one years of age resident in the district and who is not a coloured person.

Explosives.—No. 19 repeals Chapter XLVI. of the Law Book and regulates the law relating to explosives by defining the term "explosive" and sub-

[1] Cf. Private Ordinance No. 3 of 1907, on p. 465.

mitting the export or import thereof into or out of the Colony, or purchase within the Colony, to the possession of a permit, to be obtained for such purpose from a Resident Magistrate. Permits to coloured persons can only be issued with the special authority of the Lieutenant-Governor. In case of storage of quantities of over 100 lb. a proper magazine must be available.

Dealings with explosives are subject to a licence which has to be taken out under the Stamps and Licence Ordinance, No. 10 of 1903 (Journal, N.S. vol. vi. Part II. p. 403), or the Arms and Ammunition Ordinance, No. 15 of 1902 (Journal, N.S. vol. v. Part II. p. 384).

The establishment of magazines for the storage of explosives is specially regulated, and the licences to be obtained for the keeping of such magazines, which require a special permission from the Colonial Secretary, for which application has to be made.

Further provisions are made for preventing and punishing breaches of these regulations and the searching for explosives illegally kept.

National Hospital.—No. 21 amends the National Hospital Ordinance, No. 11 of 1906 (Journal, N.S. vol. viii. Part II. p. 357).

Diamond Tax.—No. 24 imposes a tax of 7 per cent. on the product of certain diamond mines as defined in Part VIII. of Ordinance No. 4 of 1904 (Journal, N.S. vol. vii. Part I. p. 174).

Insect Pest and Disease of Plants.—No. 25 provides for the prevention of the spread of insect pests and disease of plants by empowering the Governor to make regulations for the carrying out of these provisions.

Land Settlements.—No. 26 further amends the Land Settlement Ordinance, No. 22 of 1902 (Journal, N.S. vol. v. Part II. p. 385).

Locusts.—No. 27 provides for the destruction of locusts. After giving the interpretation of terms, it defines the terms "owners," "occupiers," and "owners and occupiers of mining property." The Ordinance provides that every occupier of a farm upon which locusts deposit their eggs shall, as soon as possible, under the penalty of a fine, give notice in writing to the police in his locality.

Similar notice shall be given to the same official as soon as any *voetgangers* shall appear on any farm, whether hatched out thereon or otherwise, under a penalty of a fine for driving, or attempting to drive, or permitting *voetgangers* to be driven from his farm.

As soon as the police have received any information of this kind they shall immediately transmit the information to the Director of Agriculture.

Officers shall be appointed under this Ordinance to carry out the provisions thereof and to be called Locusts Officers. These officers shall, at the orders of the Director of Agriculture, be authorised to take such steps as the Director shall think necessary for the destruction of the eggs or for destroying *voetgangers*. The costs of destruction shall be borne by the Government unless the occupier of the farm (or in case

there is no occupier, then the owner) shall have failed to give information of the appearance of any *voetgangers* on his farm.

The Government shall not be liable for damage for carrying out the provisions of this Ordinance. Penalties are provided for the destruction and the improper use of material, and all contraventions of the provisions of the Ordinance shall come before a Resident Magistrate.

Survey.—No. 29 amends the Land and Survey Ordinance, No. 16 of 1903 (Journal, N.S. vol. vi. Part II. p. 403).

Mining.—No. 30 amends the Mining and Precious Stones Ordinance No. 3 of 1904 (Journal, N.S. vol. vii. Part I. p. 173), by defining more particularly the manner in which the share of the Crown in any mine falling under the provisions of Part VI. of the 1904 Ordinance shall be ascertained and paid to the Government of the Colony.

Public Health.—No. 31 repeals Law No. 7 of 1899 (Asiatic Pest or Bubonic Plague), Part I. of the Contagious Diseases (Small Pox) Law, No. 31 of 1899; the Board of Health Proclamation No. 2 of 1901; s. 126 of the Bloemfontein Municipal Ordinance, No. 35 of 1903 (Journal, N.S. vol. vi. Part II. p. 405); s. 17 of the Municipal Corporations (Supplementary) Ordinance, No. 14 of 1905 (Journal, N.S. vol. vii. Part II. p. 488); s. 9 of the Bloemfontein Municipality (Supplementary) Ordinance, No. 19 of 1905 (Journal, N.S. vol. vii. Part II. p. 490); s. 6 of the Bloemfontein Municipality Ordinance, No. 36 of 1905 (Journal, N.S. vol. vii. Part II. p. 490) and codifies, consolidates, and amends the law relating to Public Health. Part I. contains general provisions regarding the carrying out of the provisions of this Act. Part II. provides against general nuisances with regard to sanitary regulations and the prohibition thereof. Part III. deals with infectious diseases and the notification thereof to the local authorities of urban districts or to the Resident Magistrates. Part IV. makes provisions for the prevention of contagious diseases by removing infectious persons, the removal of infectious clothes, disinfection of houses, closing of schools; by the prohibition of exposure of infected persons and things, of sending an infected child to school, of conveying infected persons in public conveyances; by the inspection of dairies and the prohibition of milk supply; by compelling dairymen to supply information and to produce lists of customers and invoices; by the disinfection of public conveyances; by granting power to local authorities to provide hospitals, mortuaries, and places for post-mortem examinations; and by the prohibition of retention of dead bodies, the removal of such bodies and their burial.

This chapter further sets out regulations regarding houses let in lodgings, and the compulsory vaccination by local authorities of persons infected with small-pox. It gives general power to the sanitary authorities to make regulations for the prevention of epidemic diseases. Part V. sets out dairy and cow-shed provisions. Part VI. provides against unsound food. Part VII. deals with ice-cream and aerated waters, Part VIII. with offensive trades,

Part IX. with the cleansing and removal of refuse. Part X. provides for a proper water supply, and Part XI. contains miscellaneous regulations and sets out the punishments on contraventions of the provisions of the Act, while in Schedule A regulations are set out for the keeping of a dairy.

Revenue.—No. 9 applies a sum of money not exceeding £82 16*s.* 8*d.* for the purpose of covering certain unauthorised expenditure over the financial year 1905-6.

No. 17 provides out of Treasury balances unappropriated on June 30, 1906, for extraordinary expenditure on certain public works and other services.

No. 20 repeals the Imperial Contribution (Contingent) Ordinance of 1903.

No. 22 applies a further sum not exceeding £14,055 for the service of the year ending June 30, 1907.

No. 23 applies a sum of £674,550 for the service of the year ending June 30, 1908.

Private Ordinances, 1—5.

Voorspoed Diamond Mine.—Private Ordinance No. 1 grants certain rights for the conveyance of water for the Voorspoed Diamond Mine.

Agents.—No. 2 confers on certain persons in the Colony privileges possessed by the admitted agents of the late Orange Free State.

Natives.—No. 3 confers certain rights on a coloured person named Charles Thomas Alexander.

Settlements.—No. 4 provides for the establishment of committees of management for certain agricultural settlements.

Roberts Victor Diamond Mine.—No. 5 grants certain rights for conveying water for the purposes of the Roberts Victor Diamond Mine.

4. TRANSVAAL.

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Letters Patent and Acts 1-37 of 1907.

Constitution.—*Letters Patent.*—The Statute Book of 1907 commences with the Letters Patent which were granted to the Transvaal on December 6, 1906, and provide for the Constitution of responsible Government for the Transvaal. The Legislature shall consist of a *Legislative Council* (to consist of fifteen members, and to be nominated for the first time by the Governor for four years, and after four years from the date of its first meeting to be elected by the qualified voters, if so provided by law passed by the Legislature) and a *Legislative Assembly* (to consist of sixty-nine members and to be elected by the qualified voters in the electoral districts set out in the Transvaal Government Notice No. 7018 of 1906).

Voters for the Legislative Assembly to be all male British subjects of twenty-one years who have the proper qualifications as to residence, good behaviour, and self-support. Qualification as a voter carries with it qualification as a member of the Legislative Assembly, provided that persons who hold any office of profit under the Crown shall not be entitled to be elected as a member, nor as a revising officer.

The elected Legislative Council and the Legislative Assembly to be dissolved five years after the date of their election, and one session to be held in each year.

Members of both Houses shall be disqualified, *inter alia*, if they accept any office of profit under the Crown. The Constitution itself excludes Ministers, Army and Naval officers, and all persons who receive pensions from the Crown, from the definition of "persons who hold offices of profit under the Crown," while Act No. 1 of 1907 makes further provisions regarding this subject.

The language in debates shall be English and Dutch, and copies of the votes and proceedings of both Houses shall be printed in both languages, as well as the copies of all proposed laws. On the other hand, the language in all Records shall be English.

The members shall receive a remuneration. Originally the Constitution fixed the remuneration at £150 plus £2 for every day of the session, with a limit of a total remuneration of £300, but by Act No. 12 of 1907 the rate of remuneration was altered.

Full legislative powers are granted to the Legislature, inclusive of the power to repeal or alter any of the provisions of the Letters Patent granting the Constitution, but any such bill must be reserved by the Governor for the signification of the King's pleasure. These Letters Patent further provide rules to be observed in case of disagreement between the two Houses, viz. dissolution of either or both Houses, and joint sittings under the chairmanship of the Speaker of the Legislative Assembly.

The Royal Prerogative of vetoing bills passed by the two Houses may be exercised by the Governor according to his discretion. He may reserve bills for the royal sanction to be given or withheld within two years, and is bound to reserve them in the case of laws providing for disabilities of natives, or repealing or altering provisions of the Letters Patent. Ministers and judges shall be appointed by the Governor, and the Inter-Colonial Council shall continue to exercise the powers given to it by the Order in Council instituting this body.

The Labour Importation Ordinance, No. 17 of 1904 (Journal, N.S. vol. vii. Part I. p. 177), shall terminate one year after the date of the Letters Patent, and no more licences shall be issued for the introduction of labourers under that Ordinance.

The rest of the provisions concern Native Administration, the establishment of a Land Settlement Board, the Consolidated Revenue Fund, and

the financial matters of the Transvaal (whereby it is provided that all appropriation bills shall originate in the Legislative Assembly), the appointments to public offices, the pensions on retirement of certain official members of the Executive Council, and the interpretation of terms in the Letters Patent and other Acts of the Transvaal.

The schedules contain instructions to Commissioners for the division of the seats of the Legislative Assembly, the regulations as to the registration of voters, the preparation of the voters' lists and the conduct of elections, the regulations for the re-division of the Colony for electoral purposes, the charges on the Consolidated Revenue Fund, the pensions to retired officers, and the Letters Patent and Ordinances repealed.

Governor's Letters Patent.—These were passed on the same day, December 6, 1906, and describe the powers of the Governor of the Transvaal, while the

Royal Instructions of the same date define the duties of the said Governor. These instructions set out the laws to which the Governor shall not give his consent without having previously obtained instructions to that effect from the Government in England, and also the regulation of the power of pardon in capital cases.

No. 1 of 1907 amends s. 30 of the Transvaal Constitution Letters Patent by defining the services which may be rendered to the Crown without being deemed the holding of offices of profit under the Crown. The offices set out in the schedule are: the membership of the Inter-Colonial Council, the Liquor Licensing Court, the Transvaal Land Settlement Board, the Volunteer Corps, and, generally speaking, any Commission appointed by the Governor to make any public inquiry.

Parliamentary Privileges.—No. 3 defines the privileges, immunities, and powers of the Legislative Council, and of the Legislative Assembly, and secures freedom of speech and debate and proceedings in Parliament, giving similar protection to persons employed in the publication of Parliamentary papers.

In all these the rules of the English Parliament are followed.

Private Bills Legislation.—No. 6 provides for the care, custody, and inspection of documents deposited with Parliament for the purpose of private Bills to be introduced therein; and further to provide for the taxation of costs incurred in the promotion of an opposition to such private Bills.

Agent-General.—No. 11 provides for the appointment of an Agent-General of the Transvaal to reside in the United Kingdom, the appointment to last during the pleasure of the Governor, or for a period not exceeding five years. The salary is fixed at £3,000 per annum, and the appointment was to take effect on August 15, 1907.

Remuneration of Members.—No. 12 amends s. 35 of the Transvaal Constitution Letters Patent, by providing that the remuneration of any

members of either House for ordinary sessions shall be £300 per session, after the deduction of £2 for every day that he will be absent during the session.

Auditor-General.—No. 14 provides for the office and tenure of office and for the definition and powers of the Auditor-General; also for the regulation of the receipt, custody, and issue of public moneys, and provides for the audit of the accounts of the Colony.

Asiatic Labourers.—No. 19 suspends temporarily and in certain cases a portion of sub-section No. 2 of s. 50 of the Constitution, 1906, with regard to the return of Asiatic labourers to their country.

Salaries.—No. 24 fixes the salary of the President of the Legislative Council and of the Speaker of the Legislative Assembly.

Field Cornets.—No. 32 repeals Law No. 2 of 1885 and again provides for the appointment of Field Cornets and determines their powers, jurisdiction, and duties.

Administration of Justice.—Criminal Appeal.—No. 18 limits the right of appeal to the Supreme Court against the convictions and sentences of Courts of Resident Magistrates in cases where the appellants appear in person before the Supreme Court. The Act contains also provisions to amend the law with regard to juvenile offenders.

No person shall be entitled to appeal from a sentence of a Court of a resident magistrate unless he has first obtained a certificate of the judge that there are reasonable grounds for his so appealing.

With regard to juvenile offenders, it shall no longer be necessary for the Registrar of the Supreme Court to keep records of proceedings in the case of sentences of moderate correction with a cane or rod not exceeding fifteen cuts pronounced against a male child not exceeding the age of fourteen years.

Trustees and Liquidators.—No. 7 has two objects. The first is to recognise the appointment of trustees and liquidators appointed abroad over an insolvent property. If the insolvent possesses property within the Colony, the foreign trustee or liquidator may, on production of his letter of appointment and after specifying in writing a place in the Colony as his *domicilium citandi*, obtain from the Court recognition as trustee or liquidator over all properties which may belong to the insolvent and be situated within the Colony.

In case this recognition is granted, the trustee or liquidator has to lodge an inventory of all such property as may be situated within the Colony, and further submit to all the rules fixed for the administration of insolvent properties in the Transvaal.

Special rules are set out for the lodging of accounts and for the distribution of assets, the payment of general creditors, the payment of unpaid dividends into the guardian's fund, payment of expenses of liquidator, and staying of actions. In all matters where these special provisions do not apply, the Insolvency Laws of the Transvaal shall apply.

The second object of the Act is to provide reciprocity with other British possessions, by stipulating that this Act shall *ipso jure* come into force as regards any other British possession from the date of the publication in the *Gazette* that in such possession due provision is made for the recognition of letters of appointment of trustees in insolvencies and liquidators by the competent authorities.

Letters Patent.—No. 28 amends the Patent Proclamation, No. 22 of 1902 (Journal, N.S. vol. v. Part II. p. 488), by transferring to the Supreme Court certain jurisdiction possessed thereunder by the Commissioner of Patents.

Workmen's Compensation.—No. 36 provides for and regulates the liability of employers to make compensation for personal injuries to workmen in their employ caused by an accident, and to punish certain offences in connection with such injuries. Notice of an accident should be given to the employer within fourteen days of the injury. Any dispute as to compensation to be paid by the employer should be referred to the Resident Magistrate for the district in which such injury was received. The compensation to be 50 per cent. of the wages which the workman was receiving at the time when the injury occurred.

Compensation shall be paid to the workman for permanent injury caused by an accident, or to the dependants of the workman for an injury causing the death of the workman, such compensation to consist of a lump sum equal to three years' wages at the rate of wages earned by the workman at the time of the injury.

The amount of contribution paid by the employer or principal to benefit societies, sick-fund administrations, or clubs to which the workman belonged shall be deducted from the amount which the employer or the principal would have been adjudged liable to pay to the workman or his dependants under this Act.

Contracting out is prohibited.

The Act, which is modelled on the lines of the English Workmen's Compensation Act, 1906, excludes from the definition "workman" all persons whose wages in respect of their work exceed £500 a year, all those who are casually employed, outworkers, and all contractors and sub-contractors who themselves engage other persons independently of their employers to perform such work.

Asiatics.—No. 2 repeals Law No. 3 of 1885 and regulates afresh the registration of all Asiatics lawfully resident in the Transvaal. Lawful residents are considered to be those who were resident and actually in the Colony on May 31, 1902, all children born in the Colony since that date not being the child of any labourer introduced in the Colony under the Labour Importation Ordinance, No. 17 of 1904 (Journal, N.S. vol vii. Part I. p. 176), and all those who were duly authorised to enter the Colony by a permit issued under the Indemnity and Peace Preservation Ordinance, No. 38 of 1902 (Journal, N.S. vol. v. Part II. p. 397).

Application for such registration had to be made by every Asiatic resident in the Colony at the date of the taking effect of the Act before a date which was afterwards fixed in the *Government Gazette* at November 30, 1907, and at such places as were afterwards fixed by notices in the *Gazette*.

Every Asiatic who shall enter the Colony after the date of the taking effect of the Act and who shall not previously have been registered under the Act has to make application for registration within eight days after entering the Colony.

The application has to be made to the Registrar, who shall consider every such application made to him. If not satisfied that the applicant is lawfully resident in the Colony, he shall report to the Resident Magistrate, and the Resident Magistrate shall summon the applicant to appear before him not less than fourteen days after notice has been given to him by the Registrar. If the applicant does not appear or does not satisfy the Resident Magistrate that he is lawfully resident in the country, the Resident Magistrate, if the applicant is sixteen years of age or more, shall make an order for the applicant to leave the country within such time as shall be fixed by the Resident Magistrate.

Special provisions are made for children under eight years of age and those between eight and sixteen years of age.

Penalties, consisting of fines not exceeding £100 and imprisonment not exceeding three months, are fixed for persons who fail to make application for registration, either on their own behalf or as guardians for children, or who bring into the Colony Asiatics under the age of sixteen years who are not lawfully resident within the Colony.

Every Asiatic found within the Colony after November 30, 1907, without being able to produce a certificate of registration may be arrested and brought before a Resident Magistrate, and if unable to satisfy the Resident Magistrate that he is a lawful holder of such a certificate, may be ordered to leave the country within such time as shall be fixed by the Resident Magistrate.

The same shall apply to an Asiatic who failed to make an application within the specified time and fails to show good and sufficient cause why he was unable to do so.

Trading licences shall not be issued to Asiatics who cannot produce a certificate of registration.

Permits may be issued by the Colonial Secretary at his discretion authorising Asiatics to enter the Colony and remain in it for a limited period to be mentioned in the permit.

Any fixed property acquired by an Asiatic before the taking effect of Law No. 3 of 1885 and registered in his name is declared transmissible by such Asiatic to another Asiatic by testamentary or other inheritance.

The other provisions of the Act regard its proper working and administration.

(N.B.—This Act was reserved for His Majesty's consent, which was notified in the *Gazette* of June 7, 1907, while the date of its taking effect was fixed at July 1, 1907.)

Immigration.—No. 15 applies restrictions on immigration of aliens into the Transvaal and provides for the removal therefrom of prohibited and undesirable persons, and for the establishment of an immigration department. The Peace Preservation Ordinance, No. 5 of 1903 (Journal, N.S. vol. vi. Part II. p. 406), is repealed.

Prohibited immigrants are, for the purposes of this Act, all persons who through deficient education are unable to write an application for admission, or would likely become a public charge if they were admitted, or prostitutes, or convicts or persons liable to conviction in some other State, or lunatics, or lepers or persons suffering from some infectious or contagious disease, or who are considered undesirables owing to information officially received, or who would be considered dangerous to the peace, order, and good conduct of the Colony if they entered therein. Excepted are members of the King's regular forces, the officers and crew of ships of any foreign state, consular officers, soldiers who have received a good discharge, the wife or minor child of a person who is not a prohibited immigrant, any European person who has been lawfully resident within the Colony, any Asiatic who is properly registered under the Asiatic Law of 1907 and who does not fall under any of the last five categories of prohibited immigrants, aborigines of Africa south of the equator who do not fall under the last five categories of prohibited immigrants, or any European agricultural or domestic servant, skilled artisan, mechanic, workman, or miner who at the date of his entry into the Colony holds a certificate signed by the Agent-General of the Colony that he or she is engaged to serve immediately on arrival and is not a prostitute.

Any person acting in contravention to this Act can be arrested and removed from the Colony by warrant of the Colonial Secretary.

All hotel, boarding-house, and loading-house keepers are ordered to keep books for the entry of names of all guests and the places from which they last came. The duties and functions of the officers of the Immigration Department are set out in the Act and provisions are made for the due carrying out thereof.

Natives.—No. 29 amends the law relating to administration of justice amongst natives and the jurisdiction of native commissioners and sub-commissioners by repealing certain articles in Acts and Ordinances relating to this subject and the whole of Ordinance No. 44 of 1902 (Journal, N.S. vol. v. Part II. p. 393).

Public Education.—No. 25 repeals Ordinance No. 7 of 1903 (Journal, N.S. vol. vi. Part II. p. 407), and amends the law relating to public education.

The Council of Education is constituted, of whom the members shall consist of a Director of Education and four others who shall be appointed by the Governor for a period of four years. The functions of the Council

will be to advise the Colonial Secretary as to the estimates of expenditure for educational purposes during each year, as to the fees payable in secondary, trade, or training schools and institutions, and regarding appeals from decisions of the Board on the medium of instruction; the appointment and dismissal of teachers in schools under the school boards; the regulations to be made by the Colonial Secretary for the carrying out of the Act, and any other matters on which the Colonial Secretary might require the advice of the Council. The Council shall not exercise any authority over the Director or any other officer of the Education Department.

Primary schools shall be established in all localities where there is reasonable ground for believing that the number of children on the roll of such school shall be not less than twenty-five throughout the year; but in addition to this, financial aid may be given to farm schools where no such primary school is established. All instruction given in a primary school shall be free of charge, and every white child between seven and fourteen years old to be obliged to attend the school regularly. It will be the duty of the school board to enforce the compulsory attendance of the children, and the parents who do not comply with these provisions shall be liable to fines under the Act.

Secondary schools and schools for higher education for white persons may be established by the Colonial Secretary in a similar way as trade and industrial schools, continuation classes, and teachers' training institutions. At the same time provisions are made for the establishment of schools, classes, and institutions for coloured children or persons.

The medium of instruction in the lower standards of any school to be the native language of the pupil (whether Dutch or any other language which is neither English nor Dutch). English to be the medium after the third standard, but the medium to be Dutch after the third standard in subjects not exceeding two in number in addition to the instruction to be given in the Dutch language if found necessary by the Director to ensure the effective teaching of the Dutch language. Provisions are made in every public school for religious instruction.

Private schools will have to be registered and furnish returns of teachers and pupils to the Educational Department, while the Director and every inspector shall have the right to visit these schools.

Provisions are made for the local management of schools or school districts. Each district shall have a school board to consist of six, nine, or twelve members, who must be resident in the district, and not be convicts or of unsound mind, and who shall be elected by all residents who are voters for the Legislative Assembly of the Colony. The boards shall have and exercise general supervision over such schools, classes, and institutions as are established or maintained within the district, with the exception of such schools which are specially marked in the third schedule of the Act. Any member of such boards shall have the right to enter

any of these educational institutions within his district, and it is the duty of the Director to transmit to the Board the reports of the inspectors of education on such institutions within their respective districts. The boards shall advise the Department on all matters connected with the provision of schools in their respective districts, shall receive and deal with applications for grants to farm schools, have the supervision of school premises, the administration of certain funds with regard to these premises, and shall consider any matter submitted to them by the committees or managing bodies of any such institution under their supervision.

Besides the school boards, school committees shall be constituted to take the place of the school committees established by the said Ordinance No. 7 of 1903, and who will consist of not less than five nor more than seven members, to be elected for every public school by those parents resident within the school district or within three miles of the boundaries thereof, who at the time of the election have one or more children on the roll of such schools. The powers and duties of such Committees shall be to report to the Board on matters concerning the welfare or proficiency of the school, the maintenance and repair of the school buildings and premises, the appointment or suspension or dismissal of teachers, and any other duties which may be delegated to them.

All teachers who hold certificates of licences to teach, issued by the Educational Department, and all teachers on the regular teachers' staff to be engaged under contract. The teachers to be appointed by the Director upon the recommendation of the school board after their consultation with, and as far as possible upon their being recommended by, the committee or managing body of the school where a vacancy occurs, but the Director not absolutely to be bound by such recommendation of the board.

Further provisions of the Act regard the moneys necessary for the department and schools and the general provisions regarding grants-in-aid, power to expropriate or reserve lands for public schools, and the power of the Colonial Secretary to make such regulations as will be necessary for the carrying out of the Act.

Land and Agricultural Bank.—No. 26 provides for the establishment, management and control of the Transvaal Land and Agricultural Bank. This Bank shall be controlled by a Board of Management consisting of five members to be nominated by the Governor. The Board shall appoint a manager of the Bank, who shall be the chief executive officer thereof, his appointment and the amount of his salary to be subject to confirmation by the Government. The appointment of all other officers and clerks of the Bank shall be made by the Board on the recommendation of the manager and with the approval of the Governor. The manager and every member of the staff to give security for the faithful discharge of their duties.

The business of the Bank shall be to advance money on mortgage on the following classes of land, viz. freehold land, quit-rent land, and land held under the Occupation Farms Ordinance, No. 25 of 1904 (Journal, N.S. vol. vii. Part I. p. 180), and such advances to be made for the purpose of effecting improvements, for the purchase of stock and plant of all kinds, and agricultural requirements generally, for paying off existing liabilities on land, for paying expenses incidental to the sub-division of land held in undivided shares, for the establishment and promotion of agricultural and rural industries, and for the purchase of land for any of the purposes described above by a person or number of persons whose financial resources are deemed adequate to carry on a business described therein.

The funds of the bank shall be £2,500,000 sterling, to be advanced by the loan raised under the Transvaal Guarantee Land Act, 1907, and to be repaid by the Bank to the Government by way of a sinking fund.

The kinds of loans which the Bank will be able to grant shall be (*a*) advances on mortgage of sums not less than £50, and not more than £2,500, the security to exceed 60 per cent. at least of a fair agricultural or pastoral value of the land, the loans to be for a limited period not exceeding five years if payable at the end in a lump sum, or not exceeding twenty-five years if repayable by instalments; (*b*) to co-operative societies and on securities on any raw or manufactured produce which is not perishable and other security which is not immovable property. The purpose of these advances shall be the erection of store-houses or the execution of water storage and irrigation works, and for schemes of land improvement, or the establishment or promotion of any rural or agricultural industry, the loan not to exceed £2,500 and to be advanced for a period not exceeding twenty-five years, repayable by instalments.

Provisions are made for the due regulation of these loans and their repayment, the keeping of proper accounts by the Board and their audit.

The schedules set out the covenants to be applied in every mortgage on the part of the borrower, the scale of valuation fees, and the scale of fees and costs for preparing the mortgage or pledge.

Land Settlement.—No. 37 amends the law relating to land settlement and provides rules for the Transvaal Land Settlement Board, which has been instituted in s. 52 of the Constitution Letters Patent. All the scheduled land for settlement to be vested in the Board as from May 1, 1907, and every debt present and future owing to the Board by the settler to be a first charge upon the holding of such settler and upon all movable property thereon, as if such debt were a debt owing to the Government.

In Part II. the powers are set out of the Board as to the settler and the holding. The board may expend money on the property the subject of the settlement, remit payment due by the settler, alter or amend the conditions of the contract, extend the time for repayment and adjustment of the instalments, grant a re-valuation of the holding, let additional land

and sub-divide holding, purchase additional land for the benefit of any settler, grant permission to the settler to sell his stock, sell or purchase from the settler stock held by him, alter the licence into a lease, and establish buildings and works.

Part III. sets out the terms which are deemed to be necessary under the lease, the conditions for the repayment of advances, the conditions of Crown grants to settlers, and the reservation of minerals on behalf of the Government.

The Act further validates certain agreements entered into and acts done by the Board since May 1, 1907.

Arms and Ammunition.—No. 10 amends the Arms and Ammunition Ordinance, No. 15 of 1902 (Journal, N.S. vol. v. Part II. p. 394). The said Ordinance of 1902 is entirely repealed and replaced by this present Ordinance.

The possession of arms is subject to the holding of a licence, which is strictly personal. All arms for which licences are issued are marked, and a register is kept of all licences. The importation of rifles and rifle ammunition is subject to an importer's licence. The dealing in arms and ammunition in the Colony requires a dealer's licence. The dealer's licence is attached to certain premises, but can be removed to other premises after proper notice has been given, and may be transferred to other holders under certain conditions. On the premises in a conspicuous place notice of the licence must be given to the public. Licensed dealers must keep registers which are open to the inspection of any police officer not below the rank of a sergeant. A special permit is required by a licensed dealer for the transfer of any arms and ammunition from his premises to any other place in or outside the Colony.

Power has been reserved to the Governor to prohibit the sale and importation or transfer of arms and ammunition, while the importation and possession of cannon and cannon ammunition are altogether prohibited. Penalties have been provided for selling arms to natives and coloured persons.

The Act further contains clauses for the fully carrying out of these provisions and for the proper administration thereof.

Infectious Diseases: Leprosy.—No. 5 amends the Leprosy Ordinance, No. 23 of 1904 (Journal, N.S. vol. vii. Part I. p. 179), so as to provide power for the Colonial Secretary to allow under certain circumstances segregation of lepers in places outside the Colony.

Lunatics.—No. 16 amends the Lunacy Proclamation, No. 36 of 1902 (Journal, N.S. vol. v. Part II. p. 392), by substituting the "Colonial Secretary" for the "Governor."

Occupation Farms.—No. 31 amends in minor respects the Occupation Farms Ordinance, No. 25 of 1904 (Journal, N.S. vol. vii. Part I. p. 180), and the Occupation Farms Ordinance, No. 13 of 1905 (Journal, N.S. vol. vii. Part II. p. 493).

Licences on Mining Grounds.—No. 35 amends the Regulation of Trade (Mining Ground) Ordinance, No. 35 of 1905 (Journal, N.S. vol. vii. Part II. p. 494), mainly providing for the Board to let stands and grant certificates to certain persons specified in the Act.

Preservation of Game.—No. 15 amends in minor respects the Game Preservation Ordinance, No. 6 of 1905 (Journal, N.S. vol. vii. Part II. p. 494).

Ostriches.—No. 30 further amends the Game Preservation Ordinance, No. 6 of 1905, and prohibits the exportation of ostrich eggs save to colonies or territories with reciprocal legislation. Any contravention of the Act to be punished with imprisonment with or without hard labour for a period of not less than one and not exceeding two years.

Diseases among Cattle.—No. 17 amends certain provisions of the Cattle Disease (East Coast Fever) Ordinance, No. 38 of 1904 (Journal, N.S. vol. viii. Part I. p. 179), relating to the prohibition of transfer or mortgage of farms until the costs of fencing the same have been paid.

Dogs.—No. 23 consolidates and amends the law relating to the registration and control of dogs outside the area of municipalities. The Act provides for the registration of dogs and issue of a badge for same to their owners. It gives power to the administration to destroy dogs which trespass or are found without badges. It repeals certain Volksraad Resolutions of the years 1887, 1891, 1893, and 1898.

Johannesburg.—No. 27 amends the Vrededorp Stands Ordinance, No. 31 of 1906 (Journal, N.S. vol. viii. Part II. p. 364), transferring the freehold title of these stands from the Government of the Colony to the Municipal Council of Johannesburg and by the Municipal Council to the registered holders of these stands, subject to the conditions set out in the Act.

Pretoria.—No. 32 confers further powers on the Council of the Municipality of Pretoria.

Townships.—No. 33 amends the provisions of the Townships Ordinance, No. 19 of 1905 (Journal, N.S. vol. vii. Part II. p. 493).

Excise and Customs.—No. 9 imposes an excise duty on beer brewed in the Colony and a customs duty on beer brewed in and imported from any colony, territory, or state belonging to any Customs Union with the Transvaal.

Finances.—No. 4 applies a sum not exceeding £500,000 towards the service of the year ending June 30, 1908.

No. 8 provides rules for raising a sum of £5,000,000 as a loan for the Transvaal, including provisions for the payment of interest and the creation of a sinking fund.

No. 20 applies a further sum (not exceeding £2,380 16*s.* 6*d.*) for the service of the year ending June 30, 1906.

No. 21 applies a further sum (not exceeding £277,145) for the service of the year ending June 30, 1907.

No. 22 applies a sum of £3,460,760 for the service of the year ending June 30, 1908.

5. SOUTHERN RHODESIA.

[*Contributed by* EDWARD MANSON, ESQ.]

Ordinances passed—10.

Employment of Natives (No. 1) amends in some small particulars the Natives Employment Ordinance, 1899.

Post Office Savings Bank.—No. 2 amends the Post Office Savings Bank Ordinance, 1904, as to the transfer of Savings Bank Accounts.

Bills of Exchange (No. 4).—This is an adoption of the recent English Act No. 17, 1906. A banker receives payment of a crossed cheque for a customer within the meaning of s. 80 of the Bills of Exchange Regulations, 1895, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

Administration of Estates (No. 6).—This is an Ordinance of one hundred and twenty-nine Articles consolidating and amending the law relating to the administration of the estates of deceased persons, minors, lunatics, and absentees.

Whenever any person dies leaving any property or leaving a will the nearest male relative is to deliver a formal notice of death to the Master of the Court.

Wills may be deposited with the Master. If not so deposited any person having a will in his possession is, on the death of the testator, to transmit the will to the Master. A warrant may be granted to search for stolen or concealed wills. In case of marriage in community of property the surviving spouse is to have an inventory taken and transmitted to the Master.

The estates of all persons dying either testate or intestate are to be administered and distributed according to Law under letters of administration to be granted by the Master to the testamentary executor duly appointed by such deceased persons, or, in default of testamentary executors, to such person as shall be appointed executor dative. Arts. 40–66 prescribe in great detail the duties of executors. Arts. 69 and 70 deal with the estates of natives married by native custom; Arts. 71–112 with the estates of minors and absent persons. Arts. 113–29 contain a variety of subsidiary provisions.

Municipalities (No. 7).—The Ordinance provides machinery for determining whether the Mayor shall be appointed by the Administrator or be one of the Councillors of the Municipality. Power is also given to the Council of any Municipality to require means of egress from buildings to be provided in case of fire.

Mines and Minerals (No. 10).—The object of this amending Ordinance is to secure the working of mining blocks or locations by the holders. It requires the holder, within six months of registration of the location, to execute at least thirty feet of development work, as much during the next

six months, and sixty feet during every succeeding year. In evidence of the work having been done, he must obtain an inspection certificate from the Mining Commissioner, failing which the location is liable to forfeiture. "Development work" is defined by Art. 9 of the Ordinance.

A mining location may be worked for profit, on notice given to the Mining Commissioner. Art. 13 fixes a scale for the royalties payable on such working for profit. There are special royalties for special kinds of minerals.

VI. WEST AFRICA.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

1. GAMBIA.

Ordinances passed—8.

Attorney-General.—A vacancy in the office of Attorney-General having recently occurred, an Ordinance (No. 2) vests all the powers of that officer in the Legal assistant to the Governor.

Criminal Evidence.—Ordinance No. 6 follows the Criminal Evidence Act, 1898, save in one particular. In case of marriages other than Christian, the husband or wife is a competent and compellable witness, but no party to a Mohammedan marriage is compellable to disclose any communication made during the marriage.

2. SIERRA LEONE.

Ordinances passed—36.

Mohammedan Education.—A Board is constituted of from four to six persons, chosen by the Governor, from the Mohammedan community for the supervision and extension of education among the Mohammedan population (No. 2). The Mohammedan schools are to be exempt from the provisions of the Education Ordinances. The Board can make rules for the distribution of this grant.

Aliens and Naturalisation.—Aliens may be naturalised in the Colony after a residence of one year, this procedure being similar to that which prevails in England (No. 5). The same Ordinance provides that aliens may acquire, hold and dispose of, real and personal property of all kinds in the same manner as natural-born subjects.

Prevention of Corruption.—An Ordinance on this subject (No. 11) follows the United Kingdom Act, 6 Ed. VII. c. 34.

Burial.—A penalty is imposed on relations and householders who fail to bury a body within thirty-six hours after death.

Coroners' Inquests.—"Coroner's Law" and procedure are consolidated in Ordinance No. 33. The most noteworthy feature of the Sierra Leone law is that inquests with jury are held only in the chief towns. Elsewhere the Coroner holds an "inquiry," with the same powers of committing for trial as if he were sitting with a jury. Native headmen have the duty of making inquiries in cases of sudden death, but where there is reason to believe that the death was murder or manslaughter, the Coroner must hold a further inquiry.

3. GOLD COAST.

(i) COLONY.

Ordinances passed—21.

Post Office.—In case of the loss within the Colony of any registered parcel, the Governor is required (except in cases beyond control) to pay compensation not exceeding 50 francs (No. 11).

Criminal Evidence.—The Criminal Evidence Act, 1898, is applied to the Colony (No. 13), but the Gambia variation is not followed. Where a person charged with an offence is married otherwise than by the Christian rite the spouse is a competent and compellable witness. A proviso is added that no party to such a marriage is compellable to disclose a communication made during the marriage. In the Gambia Law this proviso applies only to Mohammedan marriage.

Mineral Oil.—A short Ordinance (No. 15) contains some of the provisions of the Southern Nigeria law. It provides that the Government are to have a right of pre-emption over all crude oil raised in the Colony. The price is to be (failing agreement) the market price at the nearest port of shipment, and, failing that, the market price at Port Arthur, Texas. No provisions are made for licences or leases.

Prisons.—An amendment (No. 16) of the Prisons Ordinance, 1876, removes shot-drill from the list of ordinary penal tasks, but preserves it as "punishment labour." The daily maximum of shot-drill is to be three hours instead of six, and there must be an interval of an hour between two spells of an hour and a half each.

Motor-Cars.—The Motor Traffic Ordinance, 1907 (No. 17), differs in a good many respects from the Motor-Car Act, 1903. A licence may not be given, without the Governor's consent, for a motor-car exceeding six tons; and the licensing officer may refuse a licence for a car so constructed as, in his opinion, to be dangerous to persons or animals using the roads, or injurious to the roads or bridges. Licences may be granted for a year or a half-year. Fees are fixed for the various classes of motor-cars, but the

Governor may, in his discretion, exempt a person from the obligation to pay any fee. Drivers must hold certificates of competency. No rate of speed is fixed by this Ordinance, but it may be fixed for a town by the President of the Town Council, and, for other places, by the Governor.

Firearms.—No person may manufacture any firearms in the Colony without a licence from the Governor (No. 18). The same Ordinance makes it an offence, punishable with a fine of £100, or twelve months' imprisonment, to convert a flint-lock into a cap-gun.

Railways.—A gratifying sign of prosperity is an Ordinance providing for applications by private capitalists for the construction of railways. Provisional licences are issued for the survey of routes. A commission of inquiry may follow, and the Governor may, on its report, or without any report, grant a licence for construction, which is to contain the conditions subject to which the railway is to be made and maintained. The licence carries with it the powers of acquiring the necessary lands, subject to the Public Lands Ordinance, 1876. Superfluous lands must be retransferred to the owner within a specified term, or, if no time is specified, ten years. The railway is not to be opened for public traffic until approved by the inspector of railways. The owner of the railway must not grant any undue preference, or subject any particular traffic to unreasonable discharges, and must give all due facilities for forwarding traffic over other lines. The railway is not to be sold or mortgaged without the consent of the Governor.

The Government has a right to construct telegraph-lines along the railway and to use the railway in times of emergency; also to purchase it, if it is discontinued or abandoned.

Timber.—A somewhat drastic Ordinance (No. 20) prohibits the cutting of immature trees, apparently including those on private lands. A list of protected trees is given in the schedule and may be added to by the Governor.

Mohammedan Marriage.—All Mohammedan marriages must be registered at the office of a District Commissioner. For this purpose the bridegroom, the bride's wali, two witnesses to the marriage, and a licensed Mohammedan priest have to attend, and the last-named must give a certificate that the marriage is valid according to Mohammedan law. The same procedure is applicable to divorces.

(ii) ASHANTI.

Ordinances passed—5.

Firearms.—The only Ordinance meriting notice is one dealing with the storage and possession of firearms. It is of normal form except in so far as it prohibits (as in the Gold Coast) the conversion of flint-lock guns.

(iii) NORTHERN TERRITORIES.

The legislation of the year has no features of interest.

4. NORTHERN NIGERIA (PROTECTORATE).

Proclamations passed—17.

Marriage.—A general Law on the subject of civil marriage (No. 1) is on the lines of the now Model Crown Colony form, and provides all the necessary procedure and restrictive enactments. Marriage is authorised with a deceased wife's sister, and also with her niece: otherwise the English Table of Affinity rules.

Native Tribunals.—In this Protectorate, where organised procedure does not as yet reach far, much power is in the hands of the native chiefs, and Alkali's Courts under the sanction of the Native Courts Proclamation, 1906. In order to support and at the same time control these tribunals, a new Proclamation (No. 2) provides that their orders may be brought before the Provincial Courts for the purposes either of enforcement or of modification or quashing.

Cruelty to Animals.—It is only necessary to note the passing of a Law in the form familiar to us, in order to show that measures of this civilising character are not forgotten by the Protectorate Government.

Rubber Adulteration.—A severe Law (No. 8) is passed, whereby a person who adulterates rubber, or possesses or exports any adulterated rubber, is liable to a penalty not exceeding £50 or imprisonment for six months. The maximum penalties are increased twofold for a second or subsequent conviction.

Slavery.—A Proclamation (No. 17) in continuation of previous Laws of 1904 and 1905, but in a more improved form, makes provision for the freedom of all persons born since 1901, against slave-dealing, and for the manumission of slaves brought into the Protectorate.

5. SOUTHERN NIGERIA (COLONY).

Ordinances passed—27.

Lunacy.—No. 5 is a Law to make provision for the care and custody of lunatics in the Colony and Protectorate. Its provisions are of a normal character.

Mineral Oil.—Hitherto mineral oil has been dealt with under the mining Law applicable to minerals. Now by No. 12 it is treated separately. Experimental licences may be granted within one year from the passing of the Ordinance. The holder has the sole right of drilling for oil within lands specified, and not exceeding 500 square miles. As soon as any mineral oil is raised by the holder, no further licence is to be given. The licence subsists only for four years: thereafter the holder must take a lease from the Governor. Apparently the rights of drilling for oil on private lands are

taken away or denied. A licence-holder has to pay £1 per annum for every square mile of land comprised in his licence. A lessee has to pay £15 per annum for every quarter of a square mile of land subject to his lease. Both licence-holders and lessees have also to pay £15 per annum for every hole drilled. There is, further, a royalty of 5 per cent. on oil raised under a licence, and 7½ per cent. for oil raised under a lease. Licence-holders and lessees may be required by the Government to erect a refinery or to arrange for their oil being refined by others. Government also has a right of pre-emption over all crude oil, at market rates.

Savings Banks.—It seems that hitherto deposits of savings have been made at the Colonial Treasury. A Law (No. 25) now transfers all such deposits to the Postmaster-General, and organises a Post Office Savings Bank System on normal lines.

VII. EAST CENTRAL AFRICA.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

1. EAST AFRICA.

Ordinances passed—15.

Mining.—The Mining Regulations of 1902 are amended to a large extent. "Mineral" is now defined as not including clay, sand, or stone which is suitable for road-making or building, or for the making of pottery or similar purposes, and "from which no other mineral of such quality and in such quantity as to be of commercial value can be obtained."

Prospecting licences can be granted only to Europeans; they are valid for six months only, but are renewable. A prospector can, on his fee of Rs. 5, search and prospect on Crown land, but if he wishes to search on private land he must make a deposit of Rs. 375. Digger's licences also can only be granted to Europeans. A digger gets his allotted area upon a "Public Field." He must register at a public office all gold, silver, or precious stones found on his claim on the second of each month. The zone within 100 feet of the centre of the Uganda Railway is exempt from the Regulations.

Native Vessels.—Some strict regulations governing the use of native vessels are included in Ordinance No. 3. A native vessel is not allowed to leave an East African port unless it is authorised to fly the flag of one of the Signatory Powers of the Brussels Act. Native vessels belonging to British subjects or British-protected persons must be registered every year. A licence to fly the British flag is not given unless the Port Officer

is satisfied that the owner or fitter-out possesses real estate in the Protectorate, or gives adequate security for the fines to which he may be liable. The embarkation of passengers on native vessels is subjected to careful supervision and regulation in order to prevent or disclose any conduct savouring of slave-dealing.

Plague and Cholera.—No. 4 is a Quarantine law of the modern type. Plague and cholera are treated separately, ships being classed as "Plague-infected," "Plague-suspected," and "Plague healthy"; and similarly with respect to cholera. Infected or suspected ships must not communicate with any port or place in the Protectorate, except one of the four principal ports. Plague-infected ships are obliged to have all rats destroyed immediately after the discharge of the cargo. In the case of plague-suspected ships, or of ships arriving from an infected port, the Medical Officer of Health may require this to be done. In the case of cholera-infected or suspected ships, stringent regulations are made with respect to the water supply, soiled linen, human excreta, etc.

Designation of Officers.—In East Africa, in its earlier days of Indian connection, the chief officers were designated Commissioner, Sub-Commissioner, Collector, and Assistant Collector. These are now (Ordinance No. 5) to be designated Governor, Provincial Commissioner, District Commissioner, and Assistant District Commissioner.

Slavery.—As from October 1, 1907, the legal status of slavery is abolished in the Protectorate (No. 7). No rights over the body services or property of a slave are enforcible in any Court, but a District or Special Court may entertain claims for compensation in respect of the loss of service or in respect of any property of the master held by the slave. The compensation is not to exceed Rs. 100 in respect of any one slave. Provisions are made against fraudulent claims and for appeals to the High Court. Compensation may also be paid to an aged or infirm slave, who may be unable to earn a livelihood as a free man. Concubines are not within the Ordinance as slaves, but a concubine may apply to the Court for dissolution of bond of concubinage on the ground of cruelty.

Ostriches.—A special law (No. 8) is passed with respect to ostriches, which are accordingly taken out of the Game Ordinance of 1906. An "ostrich farmer" must be a European and must be registered; annual licences must be taken out by an "ostrich farmer" (Rs. 45) and by a feather merchant (Rs. 15). An ostrich farmer may sell feathers to a feather merchant, or may himself export them. A hunter's licence may not be granted to any one but an ostrich farmer. It enables its holder to capture young wild ostriches (age under two months) and take the eggs of wild ostriches. A feather merchant may export feathers bought from a farmer; but he must keep a careful register of his transactions.

Volunteers.—Provision is made for the enrolment as volunteers of Parsis and Goanese. Men of these races are, however, to form separate companies.

and are not to be enrolled unless at least fifteen are ready to join; and when the number of either company falls below fifteen it is to be disbanded.

Judiciary.—The constitution and powers of the various Courts of the Protectorate are defined in a comprehensive Ordinance (No. 13) which repeals all the existing provisions, many of which applied the Indian Code system by reference. The Courts subordinate to the High Court are of three classes: those of the Provincial Commissioner, a District Commissioner, and an Assistant District Commissioner. Besides these, there are in the Court Districts three classes of Native Courts: those of a Lewali, a Cadi, and a Mudir. Beyond the Coast districts native jurisdiction may be conferred by the Governor on a tribal chief, a council of elders, or village headman.

As regards civil jurisdiction, that of a first-class Court extends to Rs. 750 value, or, when the defendant is a native, Rs. 1,500; of a second-class Court Rs. 500, or, when the defendant is a native, Rs. 1,000; of a third-class Court, Rs. 250. A Lewali has jurisdiction over natives up to Rs. 750. A Cadi has jurisdiction only in Mohammedan cases of status, inheritance, and marriage. A Mudir has jurisdiction up to Rs. 250. There is an appeal from all subordinate Courts to the High Court, but in appeals from a Cadi's Court the Chief Cadi sits in the High Court as assessor.

In criminal matters the three classes of Courts have, as regards non-natives, the powers of the three classes of Indian magistrates, their punitive powers being limited to imprisonment for two years, six months, and one month respectively, or to fines of Rs. 1,000, Rs. 200, and Rs. 50 respectively. Additional powers may be granted by the Governor in special cases. As regards natives, their powers are not so limited, but all cases of murder, culpable homicide, and dacoity with murder, must be committed to the High Court. Subordinate Courts may impose sentences of whipping up to twenty-four lashes, but where the sentence exceeds twelve it must be approved by the High Court.

Another Ordinance (No. 14) requires that all cases where a European or American is charged with an offence punishable with imprisonment exceeding six months must be committed to the High Court.

2. UGANDA.

Ordinances passed—7.

River Regulation.—Dredging for minerals and precious stones in rivers is regulated by licence. No fee is fixed, but the Governor may require such security as he thinks fit, and may impose terms.

Licences must also be taken out for the use of steam vessels on rivers.

Authentication of Documents.—Documents executed in the United Kingdom for use in the Protectorate must be authenticated before a Notary Public; in any African Colony or Protectorate by a Notary Public, Resident Magistrate, Resident Commissioner or Assistant Commissioner, in any foreign

country, before a British Consul or Vice-Consul, by a Secretary of State or other officer, and certified by the Consul of the Power in question to be a due authentication.

Savings Banks.—An Ordinance of normal provision (No. 4) provides for the establishment of a Savings Bank at the head office of the Uganda Treasury, with branches at such out-stations as may be approved by the Governor. It is noted here as marking the progress of the Protectorate.

Undesirables.—A Sub-Commissioner may order a native (not being a native of the particular district) to remove himself elsewhere, if in the Sub-commissioner's opinion he is conducting himself so as to be dangerous to the peace of the district (No. 5).

3. SOMALILAND.

Ordinances passed—5.

Game Preservation.—A new Ordinance (No. 2) deals with this interesting subject, and repeals all previous regulations. Following the legislation of East Africa and other places, it provides for sportsmen's licences (Rs. 500), public officers' licences (Rs. 100), settlers' licences (Rs. 100), and special licences for which the Commissioner may fix the fees according to circumstances. Sportsmen and public officers are permitted to kill a limited number of animals mentioned in a schedule. A settler is more restricted; his bag must be confined to some antelopes and gazelles, pigs, and smaller cats. The following are absolutely protected from every assault except that of a person holding a special licence: viz. zebras, giraffes, eland, gnu, wild ass, buffalo, elephant, ostrich, vultures, and secretary birds. Special licences are only to be granted for scientific or administrative reasons.

Zariba Dues.—Zaribas for the purpose of Ordinance No. 5 are enclosures for standing cattle, etc., brought down from the hinterland for sale or export. Dues are prescribed for the different animals. The interesting feature of this law is that it seems to carry out some treaty obligations. Three-fourths of the net revenue of the Zaribas, up to a maximum of Rs. 10,000 in any one year, have to be paid over to the Ayyal Ahmed tribe.

4. BRITISH CENTRAL AFRICA.

Ordinances passed—7.

Railways.—The progress of the Protectorate is indicated by the passing of an Ordinance dealing with the construction of railways by private capitalists (No. 7), and an accompanying Ordinance for the compulsory acquisition of land (No. 4). It is unnecessary to expatiate upon the details of normal laws on these subjects. Suffice it to say that they are entirely up to date, even to the prohibition of spitting in railway carriages.

The other Ordinances are of no general importance.

VIII. SOUTH ATLANTIC.

[*Contributed by* EDWARD MANSON, ESQ.]

1. THE FALKLAND ISLANDS.

Number of Ordinances passed—4.

Lice in Sheep (No. 1).—Every owner of sheep is by this Ordinance required to have them dipped once a year between March and June, and in default is liable to a fine of *2s.* per sheep. "Dipping" means immersing the sheep in some lice-destroying preparation. The sheep, if fit for slaughter, may be slaughtered as an alternative. There is a further penalty for allowing sheep infested with lice to be driven or suffered to stray, or found on any land where sheep are offered for sale. Ewes before and after lambing are exempted from dipping.

Supply (No. 2).

Pensions (No. 3) makes a slight amendment in the Pensions Ordinance, 1906, by providing for the case where an officer is transferred to other public service.

2. ST. HELENA.

Ordinances passed—7.

Intoxicating Liquors (No. 1).—This is an Ordinance regulating the grant of licences and the sale of liquor.

The justices, in whom the power of granting licences is vested, are to be justices appointed by the Governor resident in the district where the business is to be carried on. The justice, if satisfied as to the character of the applicant and the suitability of the premises, gives a certificate, which must be approved by the Governor before any licence is granted. Full discretion is given to the Governor as to granting or refusing it. Every licence is to expire at the end of the year. Licences may be renewed with a fresh certificate provided no objection in writing has been received by the Colonial Secretary or the Treasurer. The word "Licensed," in large letters, must be used on the premises.

Hotels are not to be licensed unless fully equipped for the accommodation of not fewer than four boarders. Taverns are not to sell any intoxicating liquor between 10 o'clock at night and five in the morning. No licence is to be farmed. The conviction of a licence-holder for an offence against regulations or good order, or for felony or misdemeanour, renders the

licence liable to forfeiture. Harbouring a constable, or giving him liquor, is punishable with a penalty; so is serving an intoxicated person, or a person apparently under sixteen, unless the liquor is delivered in a corked or sealed vessel; or suffering gambling, or prostitutes, or persons of notoriously bad character on the premises. Sending a young person—under fourteen—to get liquor, except in a sealed vessel, is also made an offence.

In case of riot or tumult the Governor may close the licensed premises.

The scale for licences is—for an hotel, £50 (town), £25 (country); tavern, £50 (town), £25 (country); wholesale, £25.

Supply (Nos. 2 and 4).

Pensions (No. 3).—Pensions to persons who have been in the service of the Colony are to be charged on the revenues of the Colony. No public officer while under twenty is to be entitled to a retiring allowance. Pensions are not to be granted to persons under sixty (except on medical evidence of mental or bodily infirmity), and then only on a certificate of good conduct from the Governor; but in certain cases of unfitness not due to the public officer's own fault a discretion is reserved to the Governor-in-Council to allow a pension.

The maximum pension is not to exceed two-thirds of the officer's highest salary. Pensions are to cease on bankruptcy or conviction for crime. Regulations are scheduled to the Ordinance.

Smoking by Juveniles (No. 4).—This is a topic now quite familiar to students of legislation. The Ordinance makes it an offence—punishable with a fine of 20*s*.—to sell, give, or furnish any cigars, cigarettes, smoking or chewing tobacco, or other form or preparation of tobacco, to any person under sixteen years of age for his—or her—own use. But the person charged may plead that he had reason to believe the young person was of the age of sixteen, or that he was acting for or on behalf of the parent or guardian.

Procuring tobacco as agent for a person under sixteen may be visited with a penalty of £2.

Any juvenile having tobacco in any form in his possession may be fined 5*s*., or, if a boy, privately whipped (with not more than twelve strokes of a birch rod) by a constable in the presence of an Inspector or the parent or guardian of the boy.

The burden of proving the age of the person supplied is to be on the person charged; but the latter may inspect the Register of Births, free of charge, in office hours.

Customs (No. 6) reduces the charge for water supply to the shipping.

Taxes (No. 7) reduces the tax on licences for water boats, luggage boats, and passage boats.

IX. NORTH AMERICAN COLONIES.

1. DOMINION OF CANADA.

This legislation has not yet reached England.

2. BRITISH COLUMBIA.

[*Contributed by* J. A. Simon, K.C., M.P.]

Public Acts, 1-47; Private Acts, 48-62.

Court of Appeal.—No. 10, "the Court of Appeal Act, 1907," constitutes a Provincial Court of Appeal consisting of a Chief Justice and three other judges to be called Justices of Appeal. In this Court of Appeal are to be vested all the powers and jurisdiction, civil and criminal, of the Supreme Court of British Columbia sitting as a full Court.

[The constitution of Provincial Courts is within the exclusive powers of the Provincial Legislation (B.N.A. Act, s. 92), but the appointment of Provincial Judges is in the hands of the Governor-General, and their payment has to be provided by the Parliament of Canada (*id.* ss. 96, 100). Consequently, this Provincial Statute can only become effective upon the appointment by the Federal Government of the necessary additional judges.]

Compulsory Bedtime for Children.—No. 13 is "the Curfew Act, 1907," the full title of which is "An Act for Regulating the Hours during which Children of tender years may be on the Streets without their Parents or Guardians." A "child" for this purpose means any person, male or female, under the age of fourteen years. Upon a petition signed by four-fifths of the inhabitants (over twenty-one years of age) of any community of not less than one hundred adults residing in close proximity to each other, the Lieutenant-Governor in Council may erect the community into a "Curfew District." Thereupon it shall be unlawful for any "child" to be on the streets or roads within the Curfew District after 9 p.m. without lawful excuse unless accompanied by a parent or guardian, unless the child is employed in industrial occupations. For breach of the Act, the "child" may be convicted before a justice of the peace and fined $5. There is no punishment for the parent or guardian who lets the child remain in the streets.

[A similar law already exists in Ontario. No such proposal, however, was included in the Children's Act, 1908, of the Imperial Legislature!]

Drainage.—No. 14 is an Act of 41 sections and 8 Forms in the Schedule, called "the Ditches and Watercourses Act," providing for the construction and maintenance of ditches or drains by agreement between land-owners, and for the adjustment of differences, failing agreement, by an engineer

appointed by the municipality with a right of appeal from his award to a county court judge.

Franchise.—No. 16 amends the Provincial Elections Act, and provides that no Hindu (*i.e.* no "native of India, not born of Anglo-Saxon parents, whether a British subject or not") is to be placed on the Register of Voters.

Forest Fires.—No. 20 amends the "Bush Fire Act" by substituting for s. 7 of that Act the following: "All locomotive engines used on any railway which passes through, or any stationary engine used in, any fire district, or part of a fire district, shall, by the company or person using the same, be provided with and have in use the most approved and efficient means used to prevent the escape of fire from the furnaces or ash-pans or smoke-stacks of such locomotive or stationary engines, and the company or person shall see that same are in perfect order at least once a day."

Oriental Immigration.—No. 21A is "An Act to Regulate Immigration into British Columbia," which passed the Provincial Legislation but assent to which the Lieutenant-Governor reserved. It contained a very curious misprint in the final words of its principal clause, s. 4, which runs as follows: "The immigration into British Columbia of any person who, when asked to do so by the officer appointed under this Act, shall fail himself to write out and sign, in the English language, or any language of Europe, an application to the Provincial Secretary of the Province of British Columbia, to the effect of the form set out in Schedule B to this Act annexed, as well as read in English, or any language of Europe, any test submitted to him by the office appointed under this Act shall be *lawful*." The constitutional and international difficulties to which this Act threatened to give rise caused the mistake of "lawful" for "unlawful" to be overlooked. In the following session (No. 23 of 1908) the Provincial Legislature passed into law identically the same Act, with the substitution of "shall be unlawful" for "shall be lawful."

Eight Hours Day.—No. 23 is the Labour Regulation Act, 1907, and provides that no one shall be employed in or about any smelter for more than eight hours in twenty-four, between midnight and midnight; the employer is liable to a penalty not exceeding $100 nor less than $20 for each workman employed for a longer period, and the workman to a similar penalty.

Land Law.—No. 25 amends the Land Act, and substitutes a number of modified provisions as to pre-emption, the purchase of unsurveyed Crown lands, the reservation of one-quarter of town sites, etc.

University Endowment.—No. 45 provides that the Lieutenant-Governor in Council may set apart by way of endowment to the University of British Columbia lands in the Province not exceeding 2,000,000 acres.

Stock Exchange.—No. 62 is a Private Act which incorporates the Vancouver Stock Exchange.

3. PROVINCE OF MANITOBA.

[*Contributed by* H. STUART MOORE, ESQ.]

Acts passed—Public, 48; Private, 23.

Billiards and Pool (No. 2).—Keepers of licensed billiard, pool or bagatelle rooms may not admit or allow to remain on their premises a minor under eighteen years without the consent of his parents or guardian. The keeper is responsible for good conduct on his premises, and must not allow persons of notoriously bad character to assemble or meet thereon. The police have a right of search at any time.

Elections (No. 13).—The names of certain persons who were entitled to be registered as electors but who were refused registration by the registration clerk, were added to the list of electors.

Game Preservation (No. 17).—All bison or buffalo, and the females and fawns of deer, cabri or antelope, elk or wapiti, moose, reindeer or cariboo, are protected at all times.

Cruelty to Animals (No. 18).—The Humane Societies Act is amended by empowering any member of a society incorporated under this Act, or any inspector of such society, to enter upon any land, place or premises, other than a dwelling house, to search for cases of suspected cruelty to animals or birds. A justice of the peace may grant a search warrant empowering a search of any suspected place, and the caption before him of any animal cruelly used, and of the person in whose custody or possession it be.

Libel (No. 23).—All reports of proceedings in any Court of Justice, in the Senate or House of Commons of Canada, or in any committee thereof, or in the Legislature of any Province of Canada, or in any committee thereof, all matters contained in reports printed by authority of the Government of Canada or any Province thereof, and all matters given out by any Department of the Government of Canada, or of any Province of Canada, for publication, published in any public newspaper or other periodical, are privileged if they contain only fair and authentic reports without comment.

Municipal Authorities.—No. 27 amends the Municipal Act in many parts. Women of full age if qualified in respect of property may vote, and a vote is given to farmers' sons who have resided on their parents' farms for twelve months. Municipalities are not liable for accidents arising from persons falling owing to snow or ice upon the side-walks of a road except in case of gross negligence of the municipality. Municipalities may become fuel merchants to the residents, and for that purpose may keep a stock of twelve months' fuel, but the fuel must not be sold at such a price as to return a profit to the municipality.

Public Schools.—No. 35 amends the Public Schools Act on several

minor matters, and provides that the British national flag shall be flown (weather permitting) from a flagstaff, on or near the school, every day of the term from 9 a.m. to 4 p.m. When not flown it must be exhibited on the wall of the schoolroom.

Appropriation (Nos. 43 and 44).—These Acts provide $2,527,504.35 for the Government of the Province till December 31, 1907, being an increase of $333,389.70 over 1906.

Religion (Nos. 49, 50, 53, 58).—The following were by private Acts incorporated, with power, *inter alia*, of holding real and personal property:—the congregation Benai Israel of Brandon; the Bergethaler Waisenamt—a body belonging to a division of Protestants known as Mennonites; First Church of Christ Scientist, Winnipeg; the Bishop of Keewatin; the Roumanian Congregation Beth Abraham (Visach Svard).

Miscellaneous Minor Matters.—Amendments of detail are made in the following Acts:—The Assignments Act (No. 1), the Burials Act (No. 5), the Children's Protection Act (No. 6), the Manitoba Joint Stock Companies Act (No. 7), the Court of Appeal Act (No. 8), the Surrogate Court Act (No. 9), the Electoral Divisions Act (No. 11), an Act respecting the Preparation and Revision of Lists of Electors in certain Electoral Divisions of the Province (No. 12), the Manitoba Evidence Act (No. 14), the Executions Act (No. 15), the Fires Prevention Act (No. 16), the Manitoba Insurance Act (No. 19), the Jury Act (No. 20), the Law Society Act (No. 22), the Liquor Licence Act (No. 24), the Lunacy Act (No. 25), an Act to Amend the Mortgage Act (No. 26), the Assessment Act (No. 28), the Municipal Boundaries Act (Nos. 29 and 30), the Partnership Act (No. 32), the Public Parks Act (No. 34), the Manitoba Railway Act (No. 36), the Shops Regulation Act (No. 46), an Act respecting Stray Animals in Unorganised Territory (No. 42), an Act respecting Government Telephone and Telegraph Systems (No. 45), an Act respecting Municipal Telephone Systems (No. 46), the Vital Statistics Act (No. 47).

4. SASKATCHEWAN.

[*Contributed by* H. Stuart Moore, Esq.]

Acts passed—49, of which 17 are classed as Local or Private.

Appropriation (No. 1).—This Act provides $3,405,345.62 for 1907–8.

Loans.—No. 2 allows the Lieutenant-Governor in Council to authorise the raising, by bonds or debentures at 4 per cent. repayable in forty years, of a loan of $200,000 for purposes of cost of public buildings and permanent public improvements.

Interpretation Act (No. 4).—This Act provides rules of construction of Acts and for the interpretation of words used therein. The Law is considered as always speaking, and whenever any matter or thing is expressed in the

present tense the same shall be applied to the circumstances as they arise, so that effect may be given to each Act and every part thereof according to its spirit, true intent, and meaning. Every Act and every provision thereof shall be deemed remedial, and is to receive such fair, large, and liberal construction and interpretation as will ensure the attainment of the object of the Act. The terms interpreted are more numerous than in the Imperial Interpretation Act. This Act also provides as to amendments and repeal of Acts and the effect thereof.

Elections.—No. 5 gives the procedure to be followed in the case of controverted elections. It is by petition to the High Court of the Province, and trial thereby.

Public Funds (No. 6).—Defines the duties of the Treasury Department and the auditing of public accounts. All expenditure of public funds has to be by cheque countersigned by the Provincial Auditor, who has to report to the Lieutenant-Governor in Council any case of expenditure which has no legislation or executive authority.

Supreme Court.—No. 8 establishes a Supreme Court for the Province. The Court consists of a Chief Justice and four other judges. The jurisdiction of the Court is, in addition to the jurisdiction which the Supreme Court of the North-West Territories had before this Act, the jurisdiction which in England prior to the Supreme Court of Jurisdiction Act, 1873, was vested in or exercisable by the High Court of Chancery, the Queen's Bench, Common Pleas, Exchequer, Probate, and Assize Courts. The procedure and practice are determined by the Act and by rules of Court made from time to time under the Act. In the absence of special provision it is to be exercised as nearly as may be as was exercised in the High Court of England on January 1, 1898. In civil cases trial is by a single judge without a jury, but a jury may be demanded in actions for libel, slander, crim. con., seduction, malicious arrest or prosecution or false imprisonment, action of tort over $500 and in debt or contract for over $1,000. In any case a judge has the discretion of ordering trial by jury.

District Courts.—No. 9 divides the Province into eight Judicial Districts and establishes a District Court of Law and Records for each district. The original jurisdiction of these Courts is:

(1) Personal actions in contract or tort under $300.

(2) Action against the Sheriff or officer of the District Council for non-feasance or mal-feasance in connection with any matter in the Court when amount claimed is under $300.

(3) Actions of replevin under $300. It has no jurisdiction in actions in which title to land is in question, wills, malicious prosecution, libel, slander, etc., actions against a justice of the peace for acts done in the execution of his office, except by consent.

Surrogate Courts (No. 10).—Each district has a Surrogate Court. The District Judge is the judge thereof. Its jurisdiction comprises the grant of

letters of administration and probate, and the decision of all disputes in testamentary litigation. An appeal lies to the Supreme Court.

Trial by Jury (No. 11).—Defines the qualification of jurors as males between twenty-one and sixty who are natural-born or naturalised subjects of the King. There are seventeen exceptions to this rule. A jury consists of twelve, but ten may return a verdict. The jury are paid conduct-money and each receives $1 a day if he resides within two miles of the place of trial; otherwise $2 a day. The jury are not to be kept without food while considering their verdict.

Evidence.—No. 12 is a code as to the taking of oral evidence and proof of documentary evidence.

Police Courts (No. 14).—The Lieutenant-Governor may appoint Police Magistrates for every city and incorporated town. Such magistrate must be a barrister of the Supreme Court, but holding this office does not prevent his practising before any Court not a Police Court.

Testamentary Disposition (No. 15).—The Wills Act enables every person not an infant to devise by will real or personal property. Wills must be in writing executed by testator and attested by two or more witnesses in his presence, but no form of attestation is necessary. There are various provisions as to revocation and alteration, operation and construction of wills, amongst which it is provided that a devise or bequest by a testatrix to or for her issue or children does not debar an illegitimate child from taking.

Intestacy (No. 16).—The Devolution of Estates Act regulates the distributing of intestate estates, real and personal. The widow takes one-third of real and personal property, the remainder goes to the issue in equal shares; failing these, then to the other lineal descendants, who take, if in the same degree, equally, otherwise according to right of representation. The distribution of the property of intestate married women is the same as in the case of husbands, but substituting for the word widow the word husband. Desertion coupled with subsequent adultery of husband or wife renders either incapable of inheriting from the other.

Married Women (No. 18).—The Married Woman's Property Act enables married women to hold property as a *femme sole*, free from debts of her husband, and gives her all legal remedies for the protection of her property, except that an action for tort cannot be brought between husband and wife, except in respect of rights in to or out of real and personal property. In certain cases a married woman may be given the earnings of her infant children.

Legal Profession No. 19).—This Act incorporates the Law Society of the Province, and prescribes as to the persons who may become entitled to practise in the Courts. The members are barristers and solicitors, and before admission swear to well and truly, and honestly demean themselves as barristers and solicitors according to the best of their knowledge, skill, and ability.

Legal Profession (No. 20).—Empowers the Lieutenant-Governor to make not more than two K.C.'s per annum or eight in any four years.

Mechanics' Lien (No. 21).—This gives certain workers a lien for wages and materials supplied, which on registration obtains priority over other liens.

Corporations (No. 22).—Banks, Insurance, Loan and Joint Stock Companies are to pay annually certain special taxes specified in the Act.

Education.—Nos. 24 and 25 provide for the establishment and incorporation of a University for the Province, and for the organisation and maintenance of secondary education.

Wild Animals (No. 28).—In certain declared districts a bounty of $1 is given for killing a prairie wolf or wolf pup, and $5 for killing an adult timber wolf.

Miscellaneous Minor Acts.—An Act to amend an Ordinance respecting Public Health (No. 7). An Act to amend an Ordinance respecting Hire Receipt and Condition Sales of Goods (No. 17). An Act to amend an Ordinance respecting Hail Insurance (No. 29). An Act to amend an Ordinance respecting the sale of Intoxicating Liquors and the issue of licences therefor (No. 30). Statute Law Amendment Act, 1907.

5. PROVINCE OF ONTARIO.

[*Contributed by* JAMES S. HENDERSON, ESQ.]

Acts passed—126; of which 71 were Local or Private.

Interpretation of Statutes.—No. 2 is the Interpretation Act. S. 5 requires the clerk of the Legislative Assembly to endorse on every Act, immediately after the title, the day, month, and year when it was assented to or reserved; such endorsement is to be taken to be part of the Act; and the date of the assent is to be the date of the commencement of the Act if no later commencement is therein mentioned. A number of words and phrases are defined and are to receive those meanings in all Statutes unless such a construction would be inconsistent with the context; *e.g.* the word "shall" is to be construed as imperative, and the word "may" as permissive. Further the law is to be considered as always speaking, and whenever any matter or thing is expressed in the present tense, the same is to be applied to the circumstances as they arise, so that effect may be given to each Act according to its spirit, true intent, and meaning.

Printing of Statutes.—No. 3 deals with the printing and distribution of Statutes. It requires (*inter alia*) the Clerk of the Legislative Assembly to furnish the King's Printer with a certified copy of every Act as soon as the same has been assented to.

Election Law.—No. 4 consolidates and amends the Law respecting voters' lists. It deals with the making up and revision of those lists.

No. 5 amends and consolidates the Manhood Suffrage Registration Act. Every male British subject of the full age of twenty-one who is not disqualified is entitled to be entered on the list of manhood suffrage voters, provided he has resided in Canada for the twelve months preceding the day on which the first sittings for the preparation of the lists is held, and provided also that he has for a specified time resided in the particular district. Boards of registrars are constituted for preparing lists of voters. Every registrar is, during the days on which he holds sittings, constituted a conservator of the peace and invested with the same powers as justices. Offences against the Act include the provision of free conveyance, or conveyance at reduced fares by rail or vessel, of those intending to apply or applying for registration as voters.

No. 6 makes special provision for the case of clergymen or school teachers who may have ceased to reside in the electoral district in respect of which they are on the register.

Salaries of Executive Council.—No. 7 is the Salaries Act. It provides that the Attorney-General, the Secretary and Registrar of the Province, the Treasurer, the Minister of Lands, Forests, and Mines, the Minister of Agriculture, the Minister of Public Works, the Minister of Education, and the President of the Executive Council, shall each receive an annual salary of $6,000. The Minister of the Executive Council, holding the recognised position of First Minister, is to receive, in addition, $3,000 per annum.

Revenues of the Crown.—No. 9 is the Supplementary Revenue Act. It imposes in the case of mines which have an annual profit exceeding $10,000 a tax of 3 per cent. on the excess of annual profits above $10,000. There are elaborate provisions as to the method of ascertaining profits and as to deductions. All natural gas in the Province is made subject to a tax of two cents for every 1,000 feet flowing, drawn, or pumped from or produced by the well, but natural gas used by the owner or occupier of the land on which the well is situated is exempted from the tax. Where any tax imposed by the Act is not paid at the time provided, 10 per cent. is forthwith added to the amount, and 10 per cent. is to be added at the expiration of each year thereafter that the tax remains unpaid. For encouraging the smelting in Canada of iron ores mined in Ontario, and for encouraging the use in Canada of natural gas produced in Ontario, bonuses in the shape of exemption, total or partial, from the taxes on iron ore and natural gas may be given.

No. 10 is the Succession Duty Act. It specifies the property liable to, and the scales of, duty, and grants certain exemptions.

Mines.—No. 13 amends the Mines Act, 1906, in certain particulars.

Metal Refining Bounty.—No. 14 is the Metal Refining Bounty Act. It authorises the payment of a bounty upon certain metals or compounds when refined in the Province from ores raised and mined in the Province.

Highways.—No. 16 appropriates $1,000,000 for road improvements, and No. 17 authorises grants for colonisation roads.

Power Commission.—No. 19 provides for the appointment of a commission, to be known as "The Hydro-Electric Power Commission of Ontario," which may report as to the acquisition of lands, etc., to be used for the purposes of the Act, and may be authorised to acquire such lands, etc., and contract for the supply of power.

Statute Law Amendment.—No. 23 amends the Law in various particulars:

Justices of the Peace.—S. 4 enables a justice of the peace to use the town hall of any municipality, which has no police magistrate, for the hearing of cases brought before him, but not so as to interfere with the ordinary use of the hall.

Police Magistrates.—S. 5 provides that, in case of the illness or absence of a police magistrate, any other police magistrate within the county may act for him.

Marriage.—S. 8 amends the Marriage Act by adding the following provisions: Where a form of marriage has been gone through between two persons, either of whom is under the age of eighteen, without consent, the High Court is given jurisdiction, in an action brought by the party who at the time of the ceremony was under eighteen, to declare and adjudge that a valid marriage was not effected; provided, however, that such persons have not after the ceremony cohabited, and that the action is brought by the plaintiff before he or she has attained the age of nineteen. The Court is not bound to grant relief where carnal intercourse has taken place between the parties before the ceremony.

Cattle-maiming or poisoning.—S. 11 empowers coroners to investigate cases of maiming, or suspected maiming, or suspected poisoning of horses, cattle, and other domestic animals.

Livery-stable keepers.—S. 17 enables livery-stable keepers to enforce their lien by sale.

County Court Judges.—By s. 32 County Court judges may be authorised to transact business out of their jurisdictions.

Actions in respect of fires.—S. 41 provides that no action is to lie against a person from whose premises fire is accidentally communicated.

Fines and Penalties.—No. 26 makes provision for the recovery by action or by indictment, and the application of pecuniary penalties. In the case of fines imposed by any Act of the Province of Ontario, the Court or judge having cognisance of the proceedings for the recovery of such penalties may remit the same in whole or in part; but this power is not given to police magistrates or justices of the peace; nor does it authorise the remitting of costs incurred up to the time when the penalty or forfeiture is remitted.

Mortgages.—No. 27 makes provision for paying off mortgages when

provision is made for a lower rate of interest if same is punctually paid. When the interest has been punctually paid up to the time the principal money is payable, the person entitled to redeem may do so upon payment of principal and interest thereon at the lower rate on giving three months' notice of his intention to make such payment, or on paying three months' interest at such lower rate in lieu of notice. If the mortgagor fails to pay according to such notice, he is thereafter only entitled to make such payment on paying the principal and interest at the lower rate to the date of payment, together with three months' interest in advance.

Investments by Trustees.—No. 28 authorises investments in terminable debentures or debenture stock of certain companies.

Registry Laws.—No. 29 amends in details the Registry Act.

Land Titles.—No. 30 authorises the employment of counsel for the examination of titles. Easements may be entered on the register where the dominant land is registered.

Stationary Engineers.—No. 32 makes provision for the appointment of a board of examiners to conduct examinations of candidates for certificates of qualification as stationary engineers. Holders of certificates must register themselves annually; unqualified persons are not to operate or have charge of any steam plant in Ontario except in cases of emergency. The expression "steam plant" for the purposes of the Act does not include steam plant having a capacity of less than fifty horse-power, nor does it extend to steam-heating plants operating at a pressure of twenty pounds or under, nor to the operation of a locomotive engine or steamship engines.

Pawnbrokers.—No. 33 requires pawnbrokers to give security to the municipality in the sum of $1,000. A licence or renewal may be refused without cause assigned. Pawnbrokers are required to make a daily report to the police giving a description of all articles received in pawn, the number of the ticket issued in respect of each article, and the amount advanced. Failure to comply with this enactment is punishable by a fine of $40. Pawnbrokers' premises may be inspected by the police. No gold or silver pawned is to be melted on the premises of any pawnbroker unless specially authorised by the Municipal Council.

Companies.—No. 34 is the Companies Act. It consists of 212 sections and consolidates the law on the subject. It provides for the incorporation, re-incorporation, and amalgamation of companies. It defines the powers of such companies. Letters-patent incorporating a company may be forfeited for non-user, and may at any time be revoked on sufficient cause shown, or it may be surrendered on certain conditions being complied with. The corporate name of every company must be free from objection. Provision is also made for meetings of the company; as to the balance-sheet; as to shares and calls; as to the powers of directors; as to the prospectus and directors' liability, etc. As to many of these provisions, they are framed on the same lines as recent English legislation in reference to companies.

The Act also deals with mining and trust companies, and companies operating municipal franchises and public utilities.

No. 37 provides for the forfeiture of rights and privileges of a corporation operating a public utility which is declared by the Parliament of Canada to be a work for the general advantage of Canada, or which passes out of the jurisdiction of the Province. "Public utility" is defined as including any water-works, electric heat, light and power works, telegraph and telephone lines, railways and works for the transmission of gas, oil, water, or electrical power or energy, or any similar works supplying the general public with necessaries or conveniences.

Gas and Water Companies.—No. 35 enables municipalities to subscribe for and take stock in, or lend money to, these companies.

Insurance.—No. 36 amends the Ontario Insurance Act. It (*inter alia*) provides for obtaining a declaration of presumption of death where the assured has not been heard of for a period of seven years.

Railway and Municipal Board.—No. 38 makes further provision as to the duties of this Board. The Board may inquire and report as to rates charged by public utilities.

Municipalities.—No. 40 amends the Municipal Act in various particulars. It deals with laundry licences, smoke prevention, the adjustment of differences between authorities as to the maintenance and repair of bridges, roads, etc.

No. 42 enables municipalities to make by-laws as to drainage repairs.

No. 44 amends the Municipal Light and Heat Act by giving power to expropriate lands for the purpose of works.

No. 45 amends the Municipal Waterworks Act in regard to the election of commissioners.

Assessment.—No. 41 amends the Assessment Act. It deals with the assessment of pipes, poles, wires, etc., on roadways forming the boundary line between two municipalities.

Liquor Laws.—No. 46 deals with licences, and prohibits, under a penalty of not less than $10 and not greater than $50, the supplying of liquor to minors.

Natural Gas and Oil Wells.—No. 47 is an Act to prevent the wasting of natural gas and to provide for the plugging of all abandoned wells. Inspectors are to be appointed to see that the provisions of the Act are carried out.

Game and Fisheries.—No. 49 contains elaborate provisions dealing with these subjects, practically consolidating the Law. It enables the Lieutenant-Governor-in-Council to make regulations for the protection of birds, forbidding the possession of guns in any part of the Province in which it may be desirable to take special means to prevent violations of the Act. The Act also deals with open seasons for deer, moose, grouse, quails, wild turkeys, black and grey squirrels, etc. Hunting on Sunday

is forbidden. No eggs of game birds are to be taken, destroyed, or had in possession by any person at any time. Trespass in pursuit of game is made an offence, and no person is to take any game by the use of poison. Under Part III. of the Act, which deals with fish, regulations may be made forbidding fishing except under licence, for preventing the destruction of fish, and improper, wasteful, and excessive taking of fish, for regulating the number, size, and weight of any species of fish that may be caught, and for regulating the taking of frogs and setting apart any suitable waters for the cultivation and propagation of frogs. Part IV. deals with the possession, sale, and transportation of certain kinds of birds and fish. Part V. deals with the issue of licences.

Education.—No. 50 amends the Department of Education Act. It makes further provision for the affiliation of schools with the universities; and the apportionment of educational grants.

No. 51 amends the Public Schools Act. It gives to corporations, societies, agents, or persons having the custody of immigrant children, the right to send such children to the schools where they reside. It also provides for the levying of rates for continuation classes; authorises school trustees to provide and pay for dental and medical inspection of pupils, to permit school premises to be used for any educational or other lawful purpose, provided the proper conduct of the school is not interfered with, and to establish, conduct, and maintain free evening classes for the citizens at large. Urban school-boards are empowered to expend money in promoting and encouraging gymnastics and other athletic exercises.

No. 52 enacts that, subject to certain exceptions, all members of religious and educational committees thereafter appointed as teachers in Roman Catholic separate schools shall possess the same qualifications as may be required from time to time in the case of public school teachers. The Act further provides for the granting of certificates to teachers; but no such certificate can be granted under the Act to a person who is not a British subject.

No. 53 is the University Act. It authorises the equipment of observation schools in connection with the faculty of education.

Municipal Sanatoria.—No. 55 authorises the acquisition of lands for the purposes of sanatoria.

6. PROVINCE OF QUEBEC.

[*Contributed by* EDWARD MANSON, ESQ.]

Acts passed—57.

Supply (Nos. 1, 2).

Labour Accidents (No. 5).—The Lieutenant-Governor-in-Council is empowered to appoint a commission to make a critical study of the

Laws and Jurisprudence of different countries concerning labour accidents; to seek for just and equitable rules determining the remedies, and the legal relations resulting from accidents in connection with labour, and to consider the desirability of making insurance of employees obligatory.

Motors (No. 16).—The owner of a motor vehicle for which a certificate is issued is to be held responsible for any violation of the Act or any regulation under it, and for all accidents or damages caused by his motor vehicle upon a highway or public square.

Persons may be arrested without warrant in certain cases and the motor vehicle detained. "No motor vehicle is to be driven on a public highway at a greater speed than is reasonable and proper having regard to the traffic and the use of the highway, or so as to endanger the life or limb of any person or the safety of any property; nor in any event at a speed greater than nine miles an hour within the limits of a city, town, or village, or on any public highway where the territory contiguous thereto is closely built up, and of fifteen miles an hour in any other locality."

"No intoxicated person shall drive a motor vehicle." "No person shall drive a motor vehicle upon any public street, road, or highway in a race or on a bet or wager."

Companies (No. 48).—This is a code of company Law, of 90 sections, for the Province. It deals with existing companies and with the formation of new companies, the general powers and duties of a company, the liability of shareholders, capital stock, increase and reduction of capital, calls, transfer of shares, borrowing powers, dividends, directors and their powers, general meetings and inspection.

The general scheme of the Act is very similar to our company system, with slight deviations. Thus a company is not to commence operations or incur any liability before 10 per cent. of its authorised capital has been subscribed and paid. If further corporate powers are needed the directors, on the authority of a resolution of shareholders, may obtain a supplementary letters patent. The creation of preference shares requires the sanction of a vote of three-fourths of the shareholders.

Dairy Patrons (No. 51).—This is apparently a scheme for the co-operation of the farmer and the butter or cheese manufacturer. Twenty-five persons or more may form a society of patrons of a manufactory of dairy products, for each cheese factory, or butter factory, or cheese and butter factory existing in a locality. The amount of each share is ten dollars, payable by yearly instalments of one dollar. Shares are transferable. The object of the society is the protection of its members in the manufacture and sale of dairy products. It may purchase or build a cheese factory, or a butter factory, or a butter and cheese factory, and may operate, lease, or sell them. The board of directors may by by-laws make arrangements in the name of the society with the owner of a factory for the manufacture of dairy products from milk and cream supplied by the directors, make

by-laws with regard to the quality and the carriage of milk and cream delivered to the factory chosen by the society for the use of its members, and sell the products manufactured by such factory and belonging to its members.

Miscellaneous Minor Acts:

Actions *in forma pauperis* (No. 57).

Architects and Builders, responsibility of (No. 55).

Co-operative Syndicates, Law amended (No. 49).

Dairy Produce, Law amended (No. 50).

Educational Institutions, Life Insurance for (No. 52).

Fines, division of, between municipality and informer (No. 12).

Licences, amendment of Law as to the maximum number, transfers and licence fees.

Roads, Subsidy to certain municipalities for making and maintaining (No. 3).

Statutes, English originals of certain (No. 6).

Succession Duty, amended (Nos. 14, 15).

Taxes on railway companies running hotels, or operating steam or electric railways (No. 11).

7. NEWFOUNDLAND.

[*Contributed by* H. C. Gutteridge, Esq.]

Acts passed—12.

Education.—No. 1 repeals s. 2 of the Education Act, 1903, and substitutes other provisions. It allots the sum of $20,000 to the several religious denominations of the Colony, to be employed in furtherance of education in districts where there are not means adequate for the support of schools.

Companies.—No. 2 amends the Companies Act, 1899. It provides for the establishment of a register of mortgages and charges.

Aliens.—No. 3 amends c. 145 of the Consolidated Statutes, Second Series, which deals with the naturalisation of aliens.

Intestacy.—No. 4 provides that the estate of every man dying without issue after July 1, 1908, shall, if its net value does not exceed $2,000, belong to his widow; or, if its net value exceeds $2,000, be charged with the payment of $2,000 to the widow, in addition to her share of the residue.

Workmen's Compensation.—No. 5 follows the Imperial Workmen's Compensation Act, 1897, in the main, though it also incorporates some of the provisions of the Imperial Act of 1906. Its operation is limited to the employments specified in s. 7 of the Imperial Act of 1897. Compensation is recoverable by action in the Supreme Court of the Colony.

Mines.—No. 6 amends the 6 Ed. VII. c. 15, "An Act respecting the

Regulation of Mines." It prohibits the employment underground of girls and women and also of boys under the age of thirteen.

Agriculture.—No. 7 establishes an Agricultural Experimental Station and Model Farm under the control of the Minister of Agriculture and Mines. Each electoral district in the Colony is entitled, in each year, to send two students, nominated by its representative, to the farm for free instruction.

Shipping.—No. 8 is an Act designed to encourage ship-building. It grants a bounty on all vessels with fixed decks built and equipped with new material in the Colony in accordance with the schedules to the Act.

Minor Acts.

Electricity.—No. 9 incorporates the Twillingate Electric Company of Newfoundland.

Pensions.—No. 10 grants allowances to certain retired officials.

Revenue.—No. 11 amends the Revenue Act, 1905. No. 12 makes an appropriation out of the Consolidated Fund for the different branches of the public service.

8. BERMUDA.

[*Contributed by* Hon. Reginald Gray, K.C., *Attorney-General.*]

Acts passed—47.

Education.—No. 1 is an attempt to deal on improved lines with primary education, the annual grant for which was increased by £500. The schools are not public institutions, but private ones aided by contributions from the legislative grant. The Board of Education is assisted by a Local School Committee and an education officer appointed by the Board.

Immigration.—No. 4 provides for the deportation to the place whence he came of any immigrant who within three years after his arrival is imprisoned for a criminal offence, or becomes an inmate of the lunatic asylum, or becomes chargeable to any parish, or is found to be suffering from any loathsome, dangerous, contagious or infectious disease. It also makes it a penal offence for any person who would be subject to the Immigration Acts if Bermuda were his destination to land without the permission of the Immigration Officer.

Insect Pests.—No. 6 authorises the Board of Agriculture to prune, cut back, or trim trees, vines, and shrubs, the fruit of which is subject to the attack of the fruit-fly (*Ceratitis capitata*), and prohibits the importation from the West Indies of certain fruits which may be infested by the fly. The Act has worked well, and it is believed that it will result in the extermination of the fly and render it possible for peaches and similar fruits to be produced in their former perfection.

Aliens.—No. 12 makes a very important change in the law with respect

to the acquisition by aliens of land in Bermuda. Hitherto only a naturalised alien could hold land, and then only with the express permission in each case of the Governor. Under the new Act real and personal property of every description may be taken, if acquired, held and disposed of by an alien in the same manner as by a natural-born British subject. The sanction of the Governor-in-Council is necessary before an alien can acquire land *by deed*, and such sanction can be given only to the extent of 2,000 acres in the whole Islands, and 400 acres in any one parish. The act also deals with naturalisation, and naturalised persons are given all the privileges of natural-born British subjects, except that of becoming a member of the Legislature. The principal object of the Act is to encourage wealthy Americans to acquire property here and build winter residences.

Criminal Law.—No. 13—the Criminal Code Act—declares, consolidates, and amends the criminal law. It was prepared by the Chief Justice, Hon. H. C. Gollan, mainly on the lines of the Queensland Code, with the necessary adaptations to Bermuda. It contains 602 sections, and repeals the whole or parts of 73 local Acts.

Volunteers.—No. 17 authorises the organisation and maintenance of a Volunteer Cadet Corps in connection with the Bermuda Volunteer Rifle Corps, the principal object being to train boys who will ultimately become members of the Volunteer Force. An annual grant of £300 is made by the Legislature to defray the expenses.

Interpretation.—No. 20 amends and consolidates the provisions of nine previous Acts dealing with interpretations and Statute Law construction. It deals with past Acts as well as future ones.

Ocean Yacht Races.—No. 33 exempts the masters of yachts or boats competing in ocean races to Bermuda from certain requirements of the Pilot Acts, including that of taking a pilot on arrival or departure.

Wireless Telegraphy.—No. 42 continues indefinitely the Temporary Act of 1903 (No. 2), which prohibited the transmission or receipt of wireless messages except under the written licence of the Governor. The Act was made perpetual at the urgent request of the Imperial Government.

Customs.—No. 44 re-imposes the increased import duties which were fixed by the Act of 1906 with the object of yielding a sufficient revenue to meet current expenditure for 908, and the result promises to be highly satisfactory. Protective duties are imposed on unmanufactured arrowroot, lily bulbs, eggs, and water-melons throughout the year, and on bananas and potatoes during those portions of the year when our own products are obtainable. There is a 5 per cent. *ad valorem* duty on most of the necessaries of life, and a 10 per cent. duty on other articles. On spirits, cigars, and tobacco there is a specific duty plus an *ad valorem* duty. Among the articles admitted free of duty are books, coal, fresh fruit, ice, paintings, sculpture, and trees, bulbs and shrubs for planting.

X. WEST INDIES.

1. THE BAHAMAS.

[*Contributed by* HARCOURT MALCOLM, ESQ., *on behalf of the Bahamas Bar Association.*]

Acts passed—39.

Preliminary Remarks.—The Session which has just closed lasted for a few days more than five months, and consisted, so far as the Lower Chamber is concerned, of fifty-nine meetings. It was an arduous Session and has proved perhaps the most productive in the annals of the Colony. No less than fifty Bills were introduced into the two Chambers—one of these in the Upper and the remainder in the Lower. The one introduced in the Upper Chamber dealt with the subject of Dower, but it was not proceeded with beyond its initial stages and consequently was not sent to the House. Of the forty-nine that were introduced into the House, thirty-nine have become law: one, the Abolition of Probate Duty, was vetoed by the Governor; four, an unprecedented number, were reserved—these four dealt with Foreign Mail Services (two), the Bank of Nassau, and Coroners; three Bills introduced in the House did not pass that body, viz. the Acquisition of Lands Bill, Repairing of Public Roads Bill, and a Bill providing Summary Punishment for Perjury. Another Bill dealing with Emigrant Labourers passed the House and was amended by the Council, but as the Council's amendments did not secure the approval of the House, the Bill was dropped. A Bill dealing with Hackney Carriage Rates was sent up to the Council, but failed to pass that body. As to the origin of these fifty Bills, the one introduced into the Council was introduced by the Government. Of the forty-nine introduced into the House, private members were responsible for nine, Select Committees reported nine, and the remaining thirty-one were introduced by the Government. A great variety of subjects has been dealt with and an exhaustive *résumé* of each of the Acts is appended. But perhaps I will be forgiven for drawing attention to a few incidents in connection with some of the Acts in amplication of, and in addition to, that *résumé*. The preambles to the Tariff and Appropriation Acts are revivals of those previously used in the Colony, blended with those found in Imperial Acts of a similar nature. The provision in the Interpretation Act for reprinting Acts which have been amended, as amended, is an improvement in the "mechanics of law-making." In this matter our Legislature has unconsciously followed the examples of Tasmania and New South Wales. This is a practice which doubtless will be widely adopted

throughout the Empire. Other subjects dealt with by our Legislature which have recently engaged the attention of other parts of the Empire are motor-cars, petition of right, the distribution of intestates' estates—in this matter Tasmania and Queensland have put both husbands and wives in exactly the same position, while Jamaica has legislated in almost the same manner in which we have. But our Act is modelled more closely on the English Act. The clause in the Fire Brigades Act which makes damage to the property by order of the person in charge at the fire "damage by fire" within the meaning of a fire policy, has already been adopted by Dominica. This principle has been taken from s. 12 of the Imperial Act, 28 & 29 Vict. c. 90. An interesting experiment which is made possible by inserting an item in the Appropriation Act for assisting discharged prisoners in deserving cases is already being tried in Canada. There an ex-convict is supplied with a suit of ordinary clothes, the means of transportation to the place where he was convicted or any other place he may select, and a sum of money not exceeding $10. Gibraltar has adopted the principle of compulsory retirement at sixty.

A valuable reform has been carried out in connection with the engrossing and enrolling of Bills. The Legislative Council and House of Assembly have adopted a series of resolutions similar to those adopted by the Imperial Parliament in 1849. The old system of engrossing, which was done after the second reading and committal of the Bill, has been discontinued. Under the new scheme, after a Bill is read a third time in the Chamber in which it originated it is fair printed, certified by the Chief Clerk of that Chamber as a correct copy of the Bill which has passed such Chamber, and it is also signed by the Presiding Officer. Upon receiving this Bill the other Chamber deals with it in the same manner in which it used to deal with engrossed Bills, and the Chief Clerk and Presiding Officer of this Chamber also respectively certify and sign the Bill. Until the Governor's assent a Bill remains in the custody of the Chamber in which it originated and is presented for the Governor's assent by the Presiding Officer of such Chamber. The printing of Bills and Acts is done by the joint printer to the two Chambers. It is anticipated that this year's volume of the Statutes, as to appearance and form, will follow more closely the annual volume of the English Statutes. It will of course, as in the last few years, contain (1) a table of all Acts passed, and (2) a table showing the effect of the year's legislation on existing Statutes. In addition to preparing these two tables I have also prepared and attach (3) a *résumé* of all Acts passed; (4) a return showing the origin and fate of Bills; (5) a summary of the amount of legislation during the years 1900-8.

Interpretation (No. 1).—The Interpretation Act, 1908, amends the Interpretation Act, 1907, by providing a new definition for the word "land" and by adding the word "Treasury" to the list of expressions. The Magistrates Act, 1896, and any Act in amendment thereof shall apply

in all cases where it is provided that an offence should be prosecuted summarily; or a sum of money is directed or authorised to be recovered summarily; or a person may be ordered or required by a magistrate to do or abstain from doing any act; or anything is declared capable of being enforced summarily; or an amount is recoverable summarily as a civil debt. The Governor in Council may direct the payment of a portion of a fine or penalty to an aggrieved person or to a person whose information or evidence has led to the conviction. This Act also makes provision for reprinting an amended Act in its amended form. And the holding of a special Session of the Legislature will not cause the expiration of an Act which would expire in the regular way upon the termination of the then approaching annual Session.

Supply (No. 2).—The Appropriation Act, 1908, grants £33,772 5*s*. 5*d*. for the performance of public works and for payment of various claims against the Colony.

Tariff (No. 3).—The Tariff Act, 1908, is a consolidation of sixteen Acts and parts of Acts. The rates of duty remain practically the same, but a number of articles have been added to the free list.

The Act is new in form and is an improvement in this respect on those which it replaces.

Marriage (No. 4).—The Marriage Act, 1908, makes a radical change in the marriage laws of the Colony. Marriages can only be solemnised now under the authority of (*a*) a registrar's certificate, (*b*) a marriage officer's certificate, (*c*) a special licence, or (*d*) without any authority where one of the persons is *in articulo mortis*. All officers under the Act are appointed by the Governor. Magistrates are *ex officio* Registrars of marriage. Ministers of religious denominations are ordinarily entitled to registration as Marriage Officers. The assumption of such an office by them is purely voluntary, and the assent of the Secretary of State is necessary to debar a minister from being appointed as a marriage officer in respect of his congregation. No future marriage has any effect unless it is solemnised under the provisions of this Act. A marriage where one of the parties is *in articulo mortis* does not revoke a will.

Magistrates (No. 5).—The Magistrates Amendment Act, 1908, extends the civil jurisdiction of magistrates from £10 to £25 and the criminal jurisdiction by raising from £2 to £5 the value of the property in cases of larceny, etc. The summary jurisdiction of magistrates over indictable offences is suspended when by reason of a previous conviction, the accused is liable to be tried in the Supreme Court. A magistrate may also deal with malicious and unlawful wounding and grievous bodily harm or assault occasioning actual bodily harm if he thinks the offence may be adequately punished under the Magistrates Acts, 1896 to 1908. He is also given power to imprison a child for one month or fine him £5.

Out-Island Administration (No. 6).—The Out-Islands Administration Act,

1908, reorganises the administration of the Out-Islands. It effects several fundamental changes: (1) Resident justices and assistant resident justices, with their historical associations, are swept away and are replaced by commissioners. (2) Commissioners are divided into four divisions with salaries ranging from £125 to £250, according to the division the commissioner is in and irrespective of what district he may be in charge of. (3) Five years' local service is necessary for eligibility for appointment or promotion to the first division. (4) A commissioner is *ex officio* a revenue officer and warehouse keeper; may be moved from one district to another at any time, but may not remain longer than three years in any one district; and may be retired at sixty. (5) Three cadetships are created, tenable for not longer than six years. A cadet is available for service in any part of the Colony, but is not entitled to pension unless he becomes a commissioner or otherwise enters the service. (6) For the purposes of the Act the Governor in Council, subject to the approval of the Legislature, may vary the divisions of the Out-Islands.

Education (No. 7).—The Education Act, 1908, consolidates and amends twelve Acts. The Education Board consists of twelve members who are appointed annually. All property, both real and personal, is vested in the Board, which is created a corporation. Provision is made for the enforcing of the compulsory provisions of the Act; for the creation of local committees; for the performance of the duties of the several officers; and for the regulation of the constitution and procedure of the Board. Part III. provides that un-denominational religious instruction shall be supplied and requires elementary and scientific instruction in the principles of temperance, hygiene, and agriculture. The salaries of the principal officials are regulated, and in addition to these salaries an annual grant of £6,000 is made for the carrying out of the Act.

Out-Islands Commissioners of Works (No. 8).—The Out-Islands Commissioners of Works Amendment Act, 1908, incorporates the various Out-Islands Boards of Work and vests in them all public property within their respective districts. A Board upon the requisition of the Governor in Council must deal with public land as he may direct. The execution of all documents dealing with land must be under the common seal of the Board and the signatures of the chairman and two members and counter-signed by the Governor. The Act, in addition to imposing on the Civil Engineer's Department all such Out-Island duties as the Governor in Council may decide, provides for the appointment of an Assistant Engineer whose primary duty it is to perform Out-Island services.

Immigrant Paupers and Stowaways (No. 9).—The Immigrant Paupers Prevention Act, 1908, penalises the master of any ship who lands without the consent of the authorities a certain class of passenger who may become a burden on the Colony. Such person may be allowed to land if the Government is guaranteed that he will not become a burden within three

years. In addition to heavy penalties imposed on the captain and the passenger, and any one who assists in the landing of such passenger, the ship is made subject to a maritime lien.

Numbering of Houses (No. 10).—The Numbering of Houses Act, 1908, provides for the numbering of houses in the Island of New Providence.

Agriculture (No. 11).—The Board of Agriculture Amendment Act, 1908, increases the annual grant to this Board from £600 to £1,000.

Sponge and Turtle Fisheries (No. 12).—The Sponge and Turtle Fisheries Amendment Act, 1908, raises the age-limit of those who may be employed in these industries from thirteen years to fourteen years.

Insurance Companies Tax (No. 13).—The Insurance Companies Tax Extension Act, 1908, extends to the whole Colony the provisions of the Act of 1883, which imposes a tax on all business done by insurance companies.

Stamps (No. 14).—The Statute Law Revision Act, 1908, adds to the requirements for the more effectual obliteration of revenue stamps on documents, etc.

Bills of Exchange (No. 15).—The Bills of Exchange Crossed Cheques Act, 1908, is a reproduction of the Imperial Act of 1906, and provides that a banker receives payment of a crossed cheque for a customer within s. 82 of the Imperial Bills of Exchange Act, 1882, as extended to the Colony, if he credits the customer's account with the amount of the cheque before receiving payment of it.

Salaries (No. 16).—The Public Establishments Act, 1908, increases the salaries of the Public Dispenser at the Bahamas General Hospital and of the third clerk in the Treasury.

Personal Allowances (No. 17).—The Personal Allowances Act, 1908, grants personal allowances to the clerk of the market, the sanitary inspector and a tide waiter.

President of the Council's Salary (No. 18).—The President of the Council's Salary Act, 1908, provides a salary for this official, but it is only payable so long as he does not hold any other office or place of profit under the Crown.

Deputy Speaker's Salary (No. 19).—The Deputy Speaker's Salary Act, 1908, provides a salary for this officer and renders ineligible for such office any member of the House who is a Member of the Executive Council or who holds an office or place of profit under the Crown.

Intestates' Estates (No. 20).—The Intestates' Estates Act, 1908, gives the widow of an intestate who has died without issue the whole of his property if it does not exceed £50. If such estate exceeds £50, the widow has a charge thereon for £50 with interest at 4 per cent. from the death of the intestate to the time of payment. This amount is apportioned rateably between the real and personal estates and is in addition to any other interest she may have in such estate. The net value of the real

estate is estimated upon the basis of ten years' purchase of the annual value, less mortgages, etc., and the net value of the personal estate is ascertained by deducting all debts and funeral and testamentary expenses.

Petition of Right (No. 21).—The Petition of Right Act, 1908, provides machinery for the exercise of the common law right of the subject to seek redress from the Crown. This right is based on the common law of England, which was introduced into the Colony on its settlement about the middle of the seventeenth century and was finally declared to be in force here by the Declaratory Act, 1799.

Electric Light (No. 22).—The Electric Light, 1907, Amendment Act, 1908, increases the grant for this purpose from £12,000 to £15,500.

Joint Tenancy (No. 23).—The Bodies Corporate Joint Tenancy Act, 1908, is a reproduction of the Imperial Act of 1899 enabling a body corporate to acquire and hold property in joint tenancy.

Auditor of Public Accounts (No. 24).—The Auditor's Chief Clerk Act, 1908, creates a chief clerkship in the Auditor's Department at £120.

Explosives (No. 25).—The Explosives Act, 1902, Continuation Act, 1908, continues the Act of 1902 for five years.

Quarantine (No. 26).—The Quarantine Act, 1905, Amendment Act, 1908, provides a new definition of "quarantine station."

Dogs (No. 27).—The Dog Licence Act, 1907, Amendment Act, 1908, specifies the place where payment for the licence shall be made.

Land (No. 28).—The Florida East Coast Hotel Company Act, 1908, enables that corporation to hold land generally in the Colony.

Hospital (No. 29).—The Hospital Act, 1908, changes the name of the New Providence Asylum to the Bahamas General Hospital; and increases the annual salary of the assistant surgeon to £200 and imposes on him the duty of visiting and treating outside the institution any case he may be required to by the police.

Service Examination (No. 30).—The Public Service Amendment Act, 1908, subjects to an entrance examination the clerks of the various Government departments.

Motor-Cars (No. 31).—The Motor-Car Act, 1908, is a comprehensive enactment regulating the use of motor-cars in the Island of New Providence. Both the car and driver must be registered and licensed annually. Offences against the Act include (1) reckless driving, (2) using an unregistered car, (3) driving a car without a driver's licence, (4) improperly fixing or obscuring registered number, (5) employing an unlicensed driver, (6) failure to produce licence in certain cases, (7) forging or altering licence, etc. Power to apprehend without a warrant in certain cases is given to a peace officer. In case of accident, etc., driver must stop and give all particulars. Lamps and horn must be carried. The Governor in Council has power generally to make rules. The extreme speed limit is twenty miles per hour. The Act

applies to persons in the public service of the Crown and preserves all statutory or common law liabilities of both driver and owner.

Evidence (No. 32).—The Statute Law Evidence Act, 1908, makes the compilation of the Laws of 1899 available in evidence within the meaning of the Imperial Evidence (Colonial Statutes) Act, 1907.

Pension (No. 33).—The James Anderson Pension Act, 1908, provides a pension of £15 per annum for an ex-policeman.

Medical (No. 34).—The Medical Amendment Act, 1908, enables a registered qualified practitioner to sue for his fees and charges, etc., unless a by-law of his college prohibits him.

Fire Engines (No. 35).—The Fire Engines Act, 1908, provides for the creation of volunteer fire brigades throughout the Colony to take charge of and work Government fire engines under the supervision of a local fire authority. Members of a volunteer fire brigade must proceed to a fire with their engine and place themselves under the orders of the Chief Police Officer at the scene of the fire. This officer may also require any person present to assist at the fire; may take possession of and use the water in wells and tanks; and may order the destruction of houses, etc. Any damage done by virtue of this last-mentioned power must be compensated for and is also "damage by fire" within the meaning of any policy of insurance, notwithstanding anything to the contrary contained in such policy.

Jury (No. 36).—The Jury Amendment Act, 1908, exempts from jury service public tax collectors and foreign consular officers.

Mails (No. 37).—The Interinsular Mails Amendment Act, 1908, substitutes a schedule of passage rates by sailing vessels based upon the miles travelled in lieu of a specific sum from one port to another.

Tariff (No. 38).—The Tariff (No. 2) Act, 1908, exempts lawn mowers, paper boxes, and packages, etc., from import duty.

Marine Insurance (No. 39).—The Marine Insurance Act, 1908, is a reproduction of the Imperial Marine Insurance, 1906, exclusive of ss. 91 (1), 92, 93, and 94.

Résumé of Bills passed during the Session of 1908 to which Assent has been Reserved.

Coroners.—The Coroners Act, 1908, is a consolidation and codification measure. It provides for the appointment of coroners in the several districts of the Colony. In the Out-Islands every commissioner is *ex officio* coroner, but the Governor may appoint some other person coroner and may also appoint deputy coroners. Every coroner is invested with the powers of a magistrate, and he and his jury are subject to the jurisdiction of the Supreme Court in the same manner as English coroners and juries are to the High Court of Justice in England. All the common law rights of a coroner are preserved. He may inquire into the death of a person whose

body is brought into his district in the same way as he might if such person had died in his district, although the death may have taken place beyond the limits of his district or even of the Colony. The Act imposes the duty on every person present at, or becoming aware of, a death calling for an inquiry to notify the fact to the coroner or the nearest police station. The superintendent of the asylum and every gaoler must notify the coroner of the death of any lunatic or any prisoner. All inquests must be forwarded to the Attorney-General. Provision is made for the summoning of medical and other witnesses, including prisoners. The number of the jury is reduced from twelve to seven and the verdict of four is sufficient. All freeholders and householders between twenty-one and sixty years are liable for service. An alien, or a person who has been convicted of treason, murder, felony, or any infamous crime, or who is a lunatic or habitual drunkard, is ineligible. If a jury cannot be empanelled out of the twelve persons who have been summoned, the coroner may call upon bystanders to serve. The coroner and jury must view the body, unless he is of opinion that such view is not necessary for the purpose of the inquest, or that it would be dangerous for the public health. The Act makes provision for all necessary forms.

Hotel and Steam Service.—The Hotel and Steam Service Amendment Act, 1908, increases the subsidy payable for the service to Florida from £3,500 to £5,000, and reduces the annual number of trips from forty to thirty-five. It also reduces the period of the renewed contract from ten years to five years.

Mails.—The Mails Act, 1908, places £5,000 at the disposal of the Governor in Council for the maintenance of mail services between the Colony and other places.

Bank of Nassau.—The Bank of Nassau Continuation Act, 1908, renews the charter of the Bank of Nassau for a further period of twenty-one years from November 21, 1909.

RETURN SHOWING ORIGIN AND FATE OF BILLS.

Place of Origin.	Number of Bills introduced.	Number of Bills vetoed.	Number of Bills not passed.	Number of Bills that became Acts.	Number of Bills reserved.
1. LEGISLATIVE COUNCIL:					
Government	1	—	1	—	—
2. HOUSE OF ASSEMBLY:					
Government	31	—	4	25	2
Select Committees	9	1	1	5	2
Private Members	9	—	—	9	—
	50	1	6	39	4

RETURN SHOWING THE NUMBER OF ACTS FOR EACH YEAR FROM 1900 TO 1908.

Year.	Number of Acts.
1900	23
1901	21
1902	25
1903	23
1904	38
1905	18
1906	24
1907	24
1908	39

2. BARBADOS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Acts passed (1907)—50.[1]

Burials: Cremation (No. 3).—The Cremation Act, 1907, extends the existing powers of any Burial Authority so as to include the provision and maintenance of crematoria under restrictions as to distance from dwelling-houses or the public highways, and subject to regulations to be made by the Governor-in-Executive Committee and approved by the Barbados Legislature. This Act is slightly amended by a subsequent Act—No. 45, 1907.

Pensions: Official (No. 5 and No. 6).—The Pension (Amendment) and (Further Amendment) Acts, 1907, enable officers appointed to the Public Service of Barbados for the first time with a salary of £700 or over, or who have then attained the age of fifty years, to elect to be exempted from the provisions of the Pension Act, 1890, or to be subject to the provisions of s. 19 of the Pension Act, 1890, and such provisions are thereupon to apply to such officer as if he were an officer unable to effect the life insurance required by that Act.

Banks, Agricultural (No. 7).—The Sugar Industry Agricultural Bank Act, 1907, incorporates the bank under that name with perpetual succession and a common seal, and transfers to such bank the imperial free grant of £80,000, being the amount allotted to Barbados out of the sum of £250,000 granted by the Imperial Parliament in aid of the Sugar Industry of the British West Indian Colonies and British Guiana. The bank is to receive the cash and the securities, with the accrued interest thereon, then vested in the Governor-in-Executive Committee in Trust for the Sugar Industry of the Island by Act No. 12 of 1904, and apply the same in making loans to owners and receivers of sugar plantations in accordance with the provisions

[1] Acts are passed by the Governor, the Council, and the Assembly of Barbados, and are numbered consecutively for the calendar year.

contained in the Act. The Act is to come into force by proclamation of the Governor.

Public Health (No. 8).—The Public Health (Amendment) Act, 1907, amends the principal Act of 1898 by adding typhoid or enteric fever to the list of diseases of which notification is to be given to the sanitary inspector for the parish or district.

Quarantine (No. 9).—The Quarantine (Amendment) Act, 1907, is to continue in force until March 31, 1908, and only becomes operative by proclamation of the Governor. The Act enacts the adoption by the Colony of the Scheme for the establishment of a Central Quarantine Authority promulgated by the Conference of the British West Indian Colonies held in 1904, to consider the question of quarantine in those colonies and the substitution for the then existing system of uniform precautionary measures. In the Schedule to the Act is set forth the Scheme referred to in the Act.

Court of Appeal (No. 14).—The Assistant Court of Appeal (Amendment) Act, 1907, gives power to the Governor, in the case of any of the judges being a party or beneficially interested in any case or suit in, or appeal to, the Assistant Court of Appeal, to appoint some fit and proper person to act in the place of such judge. By a subsequent Act in 1907 (No. 49) a further slight amendment is made in the Principal Act of 1900.

Customs Revenue (No. 15).—The Revenue in Aid Act, 1907, imposes a duty of 10 per cent. on the amount of the existing customs duties payable under the Customs Tariff Act, 1901, by way of additional taxation.

Expiring Laws (No. 16).—The Expiring Laws Continuance Act, 1907, schedules certain Acts which are to be continued until March 31, 1908.

Vestries and Burial Grounds (No. 18).—The Vestries (Amendment) Act, 1907, amends the principal Act, 1891, in respect of the powers of Vestries to provide additional burial-grounds by enacting that lands purchased for such purpose, and to be attached to any churchyard or other consecrated burial-place as part thereof, are to be conveyed to the persons or corporation in manner directed by the Anglican Church (Barbados) Act, 1891, but if such lands are to be used as a general parochial cemetery the same are to be conveyed to the members of the Vestry for the time being, and their successors in office, and thereafter vest in the members of the Vestry for the time being.

Electric Light and Power Supply (No. 20).—The Electric Light and Power (Amendment) Act, 1907, makes further provision for the protection of the Government telegraph lines and the Barbados Gas Company's pipes by defining that, for the purpose of this protection, a line or pipes are to be deemed injuriously affected if telegraphic communication by such lines, or water, or gas supply by such pipes, is either by induction or otherwise in any manner affected.

Vaccination (No. 22).—The Infants' Vaccination (Amendment) Act,

1907, requires parents of children dying unvaccinated within six months after birth to notify the Vaccination Officer of the death and date and place of burial of such children, and also requires the Public Vaccinators to make returns (1) of children successfully or unsuccessfully vaccinated; and (2) of vaccinated children not brought back for inspection or re-vaccination.

Lunacy (No. 25).—The Lunacy Act, 1907, defines in its interpretation section the term "lunatic" to include epileptic, idiot, or any other person suffering from temporary or permanent disease or derangement of the brain, producing disordered action of the mind in such a way as to put the subject in a condition varying from his normal self, and out of relation to his environment in such a way as to render him dangerous or inconvenient to himself or others; it also defines the terms "pauper lunatic," "private patient," "registered medical practitioner," "magistrate," and "property." The Act provides for the management of asylums under the direction of the Governor-in-Executive Committee, and for inquiries as to the suspected lunacy before admission of a subject into an asylum by local magistrates and a Justice of the Peace. Further provisions are contained in the Act as to the maintenance of lunatics, the discharge of lunatics, criminal lunatics, and offences of ill-treatment or neglect by attendants, nurses and others; also as to inquiries into the cause of death. Powers are given to the Governor-in-Executive Committee as to appointment of visitors and inspectors in lunacy, and a jurisdiction is vested in the Barbados Court of Chancery to exercise in the Colony such equitable and common law jurisdiction as is possessed by the Lord High Chancellor of England in the exercise of jurisdiction over infants and lunatics in England. Powers are given to the Court, as regards the property of the lunatic, to make orders as to disposal of the income for maintenance, and as to sales and conveyances of real and personal property of the lunatic, and give directions to the Committee of the estate of the lunatic as to the exercise of powers vested in the lunatic either beneficially or as trustee.

The following Acts are repealed: the Lunatics Act, 1890, and the Lunatics (Amendment) Acts of 1899 and 1903.

Wild Birds' Protection (No. 28).—The Wild Birds' Protection Act, 1907, imposes a penalty, not exceeding ten shillings, to be recoverable in a summary way before a police magistrate, upon any person knowingly killing or wounding a wild bird, which term by the schedule includes blackbirds, yellow birds, pee-whittier, rain-bird, large and small humming-birds, wood-dove, ground-dove, grass canary, goldfinch or christmas bird, and thrush.

Court of Appeal (No. 29).—The Court of Appeal (Amendment) Act, 1907, makes slight amendments in the Court of Appeal (Amendment) Act of 1899.

Preservation of Trees (No. 34).—The Preservation of Trees Act, 1907, withdraws the bounties for planting trees provided by the principal Act of 1903, except in respect of bounties already acquired.

Bills of Exchange (No. 36).—The Bills of Exchange (crossed cheques) Act, 1907, is consolidated with the Bills of Exchange Act of 1893, and declares that a banker receives payment of a crossed cheque for a customer within the meaning of s. 82 of the Act of 1893, notwithstanding he credits his customer's account with the amount of the cheque before receiving payment thereof.

Emigration (No. 37).—The Emigration Amendment Act, 1907, enables a labourer, after the termination of his contract, to execute a voluntary renunciation of his right to repatriation. Power is given to the Governor-in-Executive Committee to prohibit the recruiting of labourers for emigration to any place out of His Majesty's dominions; also to emigration agents to recover money paid with a fine from wilful defaulters under an emigration contract.

Volunteer Forces (No. 42).—The Volunteer (Amendment) Act, 1907, enables the Governor to form corps of cadets of youths of twelve years and upwards.

Friendly Societies (No. 49).—The Friendly Societies (Amendment) Act, 1907, slightly varies the investment power in the principal Act of 1904.

3. BRITISH GUIANA.

[*Contributed by* Sir T. Crossley Rayner, K.C., *Attorney-General.*]

During the year thirty-four Ordinances were passed; of these one (No. 27) was in the nature of a private Ordinance, and the rest were public general Ordinances.

Of the latter the more important are the following:

Customs Duties (No. 1) and **Tax** (No. 2) are the Ordinances passed annually by the Combined Court under which the customs duties and inland revenue of the colony are collected.

Clergy List (No. 4).—This Ordinance provides for what is really the ecclesiastical grant made annually out of the public revenue. Up to the year 1898 the clergy of the Church of England and Church of Scotland were paid salaries by the Government, and were in much the same position as members of the Civil Service. But in that year this arrangement was altered, and while the vested rights of existing clergy were recognised and provided for, no clergy appointed after that time received any salary from the Government, but as vacancies arise 75 per cent. of the salary of retiring or deceased clergymen is paid to the Church to which they belonged, as a grant in aid of its funds. No salaries were ever paid to the clergy of the Roman Catholic Church or Nonconformist Churches,

but such Churches received a lump-sum grant, which is still continued, though the amount suffers an annual reduction which will continue until it is reduced to 75 per cent. of the amount paid in 1898, so that eventually each Church, including the Churches of England and Scotland, will receive from the public revenue a grant equal to three-fourths of the amount it formerly received.

The Clergy List Ordinance, under which these grants are paid, is passed for a specified term of years under the authority of a Resolution of the Combined Court, which thereby pledges itself to vote annually the funds necessary to pay the grants during the specified period. The Ordinance passed in 1907 is for a period of five years and will expire on March 31, 1912. It provides for the salaries of the surviving clergy of the Churches of England and Scotland, who are named in a schedule, and for the payment to each Church of a lump sum equal to 75 per cent. of the salaries of its clergy who have retired or died. It provides also for a grant to the Roman Catholic Church and Nonconformist Churches, these, however, being reduced annually by one-eightieth of the amount originally paid.

Licensed Places (Hours of Closing) (No. 6).—This Ordinance amends one passed in 1902, which fixed the hours of opening and closing of premises licensed for the sale of intoxicating liquors, and enacted a penalty on the licence-holder for selling during closing hours, but it provided no penalty for persons found upon licensed premises during those hours. This Ordinance remedies the omission in the former Ordinance.

Industrial School (No. 6).—This Ordinance repeals an Ordinance passed in 1879 for the establishment of an industrial school for youthful male offenders, and re-enacts it with amendments. It also repeals certain sections of an Ordinance passed in 1852, under which Ordinance an "Orphan Asylum and School of Industry" was established for the reception of destitute children, and also certain children convicted of criminal offences. The mixing together in one establishment of children who are merely destitute with juvenile criminals is obviously undesirable, and accordingly that part of the Ordinance of 1852 which enabled juvenile offenders to be sent to the Orphan Asylum was repealed by the Ordinance now reported upon, and since its passing the Orphan Asylum has been purely an institution for the care of destitute children.

Juvenile offenders are now sent to the Industrial School, and under the new Ordinance the following boys can be sent to it: (1) boys under sixteen sentenced to imprisonment or penal servitude; (2) vagrant boys under sixteen found begging, wandering about without proper guardianship or frequenting the company of reputed thieves; (3) boys under sixteen charged with a criminal offence; and (4) refractory boys whose parents or guardians are unable to control them. No boy can be sent to the Indus-

trial School for longer than five years or can be detained in it after he is eighteen.

The Ordinance contains power to allow boys to live out of the school on licence with persons who undertake to maintain and train them, and there is power also to apprentice them to trades, including a power, under proper precautions, to apprentice them outside the Colony, or to send them to sea.

Quarantine (No. 9).—By this Ordinance the Colony adopted the scheme for a Central Quarantine Authority for the West Indies, and made provision for being represented upon it. Under the scheme the Central Quarantine Authority has power to interpret, in case of doubt, the meaning of any phrase in the Quarantine Convention entered into by British Guiana and most of the West Indian Colonies in 1904, and to decide, in case of doubt, whether any disease occurring in any of the colonies parties to the Convention is an infectious disease under the Convention.

Dispensaries (No. 10).—This Ordinance enables the Government to establish dispensaries in various parts of the Colony where poor persons can obtain medical advice and treatment, either free or upon a small payment, according to their means.

Indictable Offences (Procedure) (No. 11).—This Ordinance enables magistrates to award compensation to persons charged before them with indictable offences, where the charge is dismissed and in the magistrate's opinion is frivolous or vexatious. A similar power to award compensation in summary cases has long been possessed by magistrates (No. 12 of 1893, s. 43), but until the passing of this Ordinance there was no power to award it in indictable cases.

In British Guiana jurors have long been paid for their services, but in 1905 it was decided to discontinue the practice as to jurors who lived in the place where the Court sat, but to allow travelling expenses to those who had to attend from a distance. Last year, however, it was decided to revert to the old system of paying all jurors, and this Ordinance accordingly re-enacts the former scale of fees payable to jurors. It may be noted that in this colony there are juries only in criminal cases, there being no trial by jury in civil cases.

Local Government (No. 13).—This Ordinance consolidated and amends the law relating to local government, and places the supervision of local government in the hands of a central body called the Local Government Board, which has certain defined powers over local authorities. The Ordinance creates four different kinds of areas for the purposes of local government, viz.: (1) Urban Sanitary Districts, (2) Village Districts, (3) Country Districts, and (4) Rural Sanitary Districts. There are only two Urban Sanitary Districts, the city of Georgetown and the town of New Amsterdam, each of which has a Town Council, elected under a special Ordinance, and except that they have power, in common with all local

authorities, to enforce the general sanitary provisions contained in the new Ordinance, they are not much affected by it. In Village Districts the local authority is a Council, the members of which may be either elected by the rate-payers or appointed by the Local Government Board, or partly elected and partly appointed, as the Board may determine, for each village. In country districts the local authority consists solely of members appointed by the Local Government Board, and except as to the constitution of the Local Authority there is little difference between a Village District and a Country District, and the Village Councils and Country Authorities have much the same powers and functions. Rural Sanitary Districts are constituted in those parts of the Colony where the population is not sufficiently large or not sufficiently advanced to be created Villages or Country Districts, and in such places the Local Government Board itself discharges the functions of local authority. The aim of the Ordinance is to encourage the people of each locality to undertake the management of their own affairs, and for this purpose to provide different kinds of local authorities suited to the different needs and circumstances in each locality, from the completely organised Town Councils in the large centres of population, which act much as municipal corporations do in England, down to the sparsely populated rural districts in which the Local Government Board enforces only such elementary regulations as are necessary.

School Teachers' Pensions (No. 14).—In 1905 an Ordinance was passed to give pensions to elementary school teachers out of the public revenue. In 1907 the Combined Court, which alone can vote money for any purpose, decided to increase the scale of pensions, and accordingly this Ordinance repeals the one of 1905, and re-enacts it, providing for a higher rate of pension.

Money-Lenders (No. 16).—This Ordinance is practically a transcript of the Money-lenders Act, 1900 (63 & 64 Vict. c. 51), and was enacted to deal with much the same difficulties which led to its enactment in England.

Bills of Exchange (No. 17).—This Ordinance enacts for the Colony the Bills of Exchange (Crossed Cheques) Act, 1906 (6 Edw. VII. c. 17), and brings the colonial law as to bills of exchange up to date.

Music and Dancing Licences (No. 21).—This Ordinance is based on similar provisions contained in the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59, s. 51), for the regulation of public entertainments.

Public Free Library (No. 24).—This Ordinance enables the Georgetown Town Council to pay out of the rates half the cost of the maintenance and upkeep of a public free library in Georgetown, the other half of the cost being paid by the Government out of the public revenue. The cost of the erection of the building is being defrayed by Mr. Carnegie.

Steam Boilers Regulation (No. 25).—There having been several fatal

boiler explosions in the Colony, this Ordinance was passed to require the periodical examination of all boilers, so as to prevent boilers which are defective or have become weak from long use being worked. It is based on provisions contained in the Factory and Workshop Act, 1901 (1 Ed. VII. c. 22, s. 11).

Registration of Clubs (No. 26).—There have lately sprung up in the Colony a number of clubs, some being little more than illicit drinking-places. Accordingly this Ordinance has been passed to require the registration of all clubs where intoxicating liquors are supplied to the members in the same manner as is now required in the United Kingdom. The Ordinance is modelled on the Acts passed for the same purpose in Scotland (3 Ed. VII. c. 25, ss. 77–90) and Ireland (4 Ed. VII. c. 7).

Friendly Societies (No. 28).—The object of this Ordinance was to amend the Friendly Societies Ordinance, 1893, by making registration compulsory on all Friendly Societies, following in this respect the legislation of the neighbouring colony of Barbados, and the Ordinance accordingly enacted that every society which might register itself under the Ordinance of 1893 should be compelled to do so. There are a large number of Friendly Societies in this Colony, and it was hoped to safeguard the members by bringing them under the supervision of the Registrar of Friendly Societies.

Though no opposition was made to the measure in the Legislature, very strong opposition has been made since its passing, especially by Friendly Societies connected with the Churches, and it has been decided to repeal the Ordinance, and restore the law to what it was before its passing, and a Bill to that effect is now before the Legislature.

Service by Post (No. 30).—This Ordinance substitutes a new definition of service by post contained in the Interpretation Ordinance, 1891 (No. 14 of 1891), in order to meet a difficulty which has been experienced in those places where there is no house-to-house delivery of letters. In those places the Ordinance requires service to be by registered letter, and notice must be delivered to, or left at the residence of, the addressee, stating that a registered letter is lying for him at the post office, and a declaration must be made before a Justice of the Peace by the person who delivered or left the notice that he duly delivered or left it.

Clergy List (No. 32).—This Ordinance, passed in pursuance of a resolution of the Combined Court, provides for the payment of the salaries of certain of the officials of the Colony for five years, and charges them upon the general revenue of the Colony.

The only private Ordinance passed in 1907 is the Demerara Electric Company's Ordinance (No. 27), which protects the Company against certain claims for nuisance.

In 1904 actions were brought against the Company for an injunction and damages caused to the plaintiff's houses by vibration consequent on the working of the Company's machinery. Judgment was given against the

Company, which was sustained upon appeal to the Privy Council (*Demerara Electric Co.* v. *White*, L.R. [1907] A.C. 330).

It was found impossible for the Company to remove its works except at a ruinous cost, and compliance with the judgment meant practically the abandonment of its undertaking. As that undertaking is a work of public utility—the supply of electric light and power to Georgetown and the running of a service of electric tram-cars—the Legislature has, at the request of the Company, passed this Ordinance, which, however, does not become operative till the Company have installed new machinery, which it is expected will materially lessen the vibration, if it does not entirely stop it. The Company was also required to compensate the plaintiffs and obtain their consent to waive their right to have the injunction enforced, before the Ordinance was passed. From the date of the installation of the new machinery the Company is protected against any claims in respect of vibration. The Ordinance practically recognises the proposition that the few must suffer for the general good, and in effect enacts that, in consideration of the benefits the Company's undertaking confers upon the general public, the few whose houses are near the Company's power-house and station must suffer the inconvenience of its noise and vibration, though this has been reduced as far as possible, and all who took steps to enforce their rights have been compensated.

4. BRITISH HONDURAS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—27.[1]

Spirits-Excise Administration (No. 2).—The Spirits Ordinance, 1907, repeals the Excise Ordinance, 1887 (saving proceedings pending thereunder), and regulates, in accordance with the provisions of the Ordinance, the manufacture, storage, conveyance, and sale of spirits. An excise system, with registration of stills and regulations for the issue of licences and supervision of distilleries and revenue warehouses, is established.

Quarantine (No. 6).—The Quarantine Ordinance, 1907, is to become operative on and from the day fixed by the Governor by Proclamation, and the regulations of the Ordinance as to quarantine are made applicable to diseases of cholera, yellow fever, small-pox, and bubonic plague.

Water Supply (No. 7).—The Public Health (Water Supply) Ordinance, 1907, is consolidated with The Public Health Ordinance, 1894. The Ordinance enables any Local Board of Health to utilise the roofs of buildings, not used as dwelling-houses, as collecting areas for rain-water to be thence conducted into tanks for storage purposes on the land on which such

[1] Ordinances are passed by the Governor with the advice and consent of the Legislative Council, and are numbered consecutively for the calendar year.

buildings are situated, and the rain-water so stored is to be the property of the Local Board of Health. Owners of dwelling-houses are to provide rain-water storage tanks connected by suitable pipes with the roofs of buildings. No receptacles for water are to be in use unless the same be cleaned every day, or be properly protected from mosquitoes. Powers are given to the Central Board and the Local Boards of Health for the purpose of enforcing the provisions of the Ordinance.

Railways (No. 8).—The Government Railway Ordinance, 1907, bars all actions by owners of land against persons employed by the Government on the survey or construction of Government railways, but saves all lawful claims for compensation, which is to be determined in accordance with the provision of the Ordinance.

Midwives (No. 11).—This Ordinance repeals Ordinance No. 2 of 1888, as to the licensing of midwives, and makes it requisite for all persons desirous of practising as midwives to obtain a licence in accordance with the regulations of the Ordinance from the District Commissioners. Penalties are imposed upon persons who shall, except under the direction of a medical practitioner, practise midwifery in any town of the Colony wherein a medical practitioner resides; and the Ordinance transfers the existing Register of Midwives under the repealed Ordinance to the Registrar-General of the Colony.

Pensions (No. 13).—This Ordinance, which amends and is consolidated with the Pensions Ordinance, 1900, provides that officers transferred to other public service and retiring at the age permitted by that service under fifty-five years, shall be eligible for pension by the Colony under the above Ordinance.

Labour Agreements (No. 14).—This Ordinance amends the Labour Law, Hire, and Service Ordinance, No. 71, of the Consolidated Laws, and inflicts penalties upon persons causing a breach of agreement between employer and labourer.

Postal Insurance (No. 18).—This Ordinance, which amends and is consolidated with Ordinance No. 78 of the Consolidated Ordinance relating to the Post Office, enables the Governor on behalf of the Colony to adopt the provisions of the Insurance Agreement of the Postal Union dated and signed at Washington on June 15, 1897, so far as relates to the insurance of letters, and take such steps and make all such arrangements as may be necessary in that behalf.

Recovery of Rent (No. 22).—The Small Tenements Ordinance, 1907, extends the provisions, with some minor variations, of the Ordinance No. 67 of the Consolidated Ordinances for the Recovery of Tenements, to any separate room, flat, or portion of a building of which a tenant has occupation.

Bankruptcy (No. 23).—This Ordinance, which amends and is consolidated with the Bankruptcy Ordinance, 1901, imposes penalties for certain offences therein set forth committed by persons against whom a receiving order has been made.

Motor-Cars (No. 24).—The Motor-Car Ordinance, 1907, requires all

persons driving a motor-car on a public highway to take out a licence in accordance with the provisions of the Ordinance, and inflicts penalties on persons guilty of offences under the Ordinance.

Mineral Oil (No. 26).—The Crown Lands (Mineral Oil Reservation) Ordinance, 1907, extends the reservation to the Crown of all mines of gold etc., and coal, etc., under the Crown Lands Ordinance, No. 103 of the Consolidated Ordinances, so as to include "mineral oil."

Land Taxation (No. 27).—The Land and Property Tax Ordinance, 1907, imposes on all land in the Colony, other than land in a town, a tax of three-quarters of one cent per acre or fractional part of an acre; and on cultivated land, other than land in a town, a further tax of one cent and a quarter per acre or fractional part of an acre; and on land served by a railway a further tax not exceeding eight cents per acre or fractional part of an acre, as the Governor, with the consent of the Legislative Council, shall from time to time by Proclamation declare. The rate on land in a town varies according to the annual value being above or below thirty-five dollars, and also for land unoccupied or occupied by caretakers only. The taxes become due on April 17 in each year, and are payable by the owner of the land, and are made a first charge on the lands. Powers are given to the Governor in certain events to remit the taxes, and, as regards land under development in the interest of the Colony, to exempt the same from taxation for a given period. Yearly returns by owners and persons in possession of lands are to be made in accordance with the provisions and regulations set forth in the Ordinance. Taxes raised in respect of land in a town are allocated to the credit of the local fund: and in respect of all other land to the general revenue of the Colony.

The volume of Ordinances for 1907 contains also the Statutory Rules and Orders made during the year, and the Proclamations issued by the Governor in 1907.

5. JAMAICA.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

Laws passed—27.

Earthquake.—The earthquake of January 14, 1907, influenced the whole legislation of the year. The Imperial Parliament voted the sum of £150,000 as a free gift for the benefit of sufferers, and Law No. 20 provides for the distribution of the grant by an Assistance Committee. Besides this, the Colony was authorised to borrow a sum of £800,000 from the Imperial Treasury. The administration of this loan is assigned by Law No. 23 to a Special Loan Board. The money is to be lent to owners of property, building societies, etc. The opportunity is taken to pass at the same time two Building Laws (Nos. 13 and 24) for Kingston, and containing specifica-

tions similar or analogous to those of our local Acts. All rates and taxes (other than water rates) for the first quarter of the year which were still unpaid on June 17 were remitted (Law No. 14).

6. THE CAYMAN ISLANDS.

[*Contributed by* EDWARD MANSON, ESQ.]

Ships' Cargoes (No. 1).—To facilitate the handling of ships' cargoes a pier and shelter is to be built at North Sound in Grand Cayman. All vessels using the pier are to pay a tax of two shillings per annum for each vessel.

Police (No. 3).—The object of this Law is to provide an efficient police force for the Islands. The members are to be appointed by the Commissioners. The Serjeant-Major at Grand Cayman is to be *ex-officio* Inspector. S. 5 defines the duties of the members of the force and s. 6 specifies cases in which they may arrest without warrant.

Power is reserved to swear in special constable for emergencies. No action is to be brought against a member of the force for anything done in the execution of his duty.

7. TURK'S AND CAICOS ISLANDS.

This will appear later in the year.

8. TRINIDAD AND TOBAGO.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed (1907)—38.[1]

Married Women's Property (No. 1).—The Married Women's Property Ordinance, 1907, makes every contract thereafter entered into by a married woman, otherwise than as agent, binding on her separate property to which she is then, or may thereafter become, entitled, and also enforceable against all property to which, while discovert, she may thereafter become entitled: her separate property then or thereafter under restraint from anticipation is excepted from liability under such contract; but in actions by a married woman the Court may order payment of the costs of the opposite party out of her property under such restriction, and enforce its order by appointment of a receiver or by a sale or otherwise.

The 51st section of the Wills and Probate Ordinance (No. 99), which makes wills as regards property comprised in them speak as if executed

[1] Ordinances are made by the Governor, with the advice and consent of the Legislative Council, and Public and Private Ordinances are numbered consecutively for the calendar year.

immediately before the death of the testator, is to apply to wills made by married women during coverture whether they are or are not then possessed of separate property, and such wills need not be re-executed after the death of the husband.

Sub-ss. 3 and 4 of s. 3 of the Married Women's Property Ordinance, No. 65, are repealed.

Colonial Government Loans (No. 2).—The General Loan and Inscribed Stock Ordinance, 1907, provides for the creation of Inscribed Stock and enables the Colony to take advantage of the provisions of the Colonial Stock (Imperial) Act, 1877, and the subsequent Acts on the same subject. Loans for the purposes mentioned in any Ordinance may be raised either by debentures or by Trinidad Inscribed Stock, or partly by debentures and partly by Inscribed Stock, and the principal monies and interest secured thereby are charged upon the general revenue and assets of the Colony.

Crown Quit-rents (No. 3).—This Ordinance amends the Land Charges and Land Taxes Ordinance, No. 204, and enables all Crown Quit-rents to be redeemed upon payment of a sum of money equal to twelve years' quit-rent.

Immigration Funds (No. 6).—This Ordinance levies export duties on sugar, molasses, rum, cocoa, coffee, coco-nuts, and copra, being produce raised in the Colony and exported between April 1, 1907, and December 31, 1907, in aid of immigration. By subsequent Ordinance No. 28, 1907, the period is extended until December 31, 1908.

Copyright (No. 7).—The Copyright Ordinance, 1907, is consolidated with the existing like Ordinance (No. 75) and extends to the Colony the principles of the Imperial Fine Arts Copyright Act, 1862, in favour of the authors, being British subjects or resident within the British dominions, of original paintings, drawings, and photographs, not sold or disposed of before the commencement of the Ordinance (February 27, 1907), and their assigns.

Bankruptcy (No. 8).—The Bankruptcy Ordinance, 1907, which is to come into force on such day as the Governor may by Proclamation appoint, amends and consolidates the Law of the Colony relating to the administration of the estates of bankrupts and insolvent persons. The Ordinance contains 138 sections, classified under nine leading parts as follows :

Part I.—Proceedings from Act of Bankruptcy to Discharge.

Part II.—Disqualifications of Bankrupt.

Part III.—Administration of Property.

Part IV.—Receiver in Bankruptcy.

Part V.—Trustees in Bankruptcy.

Part VI.—Jurisdiction, Procedure, and Powers of Court.

Part VII.—Small Bankruptcies.

Part VIII.—Supplemental provisions as to exclusion from the Ordinance of companies registered under the Companies Ordinance, No. 69 : as to

Rules, Evidence, Computation of Time, Notices, Formal Defects, Stamp Duty, Corporations, Rights of the Crown, and Unclaimed Funds and Dividends.

Part IX.—Punishment of Fraudulent Debtors; the Construction of Former Ordinances; the Registration, etc., of Receiving Orders; Repeal and Saving Provisions. The six Schedules are as follows: 1st Schedule as to Meeting of Creditors; 2nd Schedule as to Proof of Debts; 3rd Schedule as to Statement of Affairs; 4th Schedule as to form of Notice of Receiving Order; 5th Schedule as to Ordinances repealed; and 6th Schedule the Bankruptcy Rules, 1907, containing 340 general rules and an appendix of 194 miscellaneous Bankruptcy Forms.

Summary Convictions (No. 10).—The Summary Convictions (Offences) Ordinance, 1907, is consolidated with the like Ordinance (No. 5), and makes it penal to discharge firearms, fireworks, bombs, and other explosives in or within a certain distance of the public streets.

Mining (No. 13).—The Mines Regulation Ordinance, 1907, comes into operation on a date to be fixed by Proclamation of the Governor, and applies to all mines, borings, and quarries in the Colony. It subjects all managers of mines conducting mining operations to the supervision of the Inspector of Mines, and such managers have to take out certificates of competency. In the two Schedules are contained detailed mine regulations and boring regulations.

Explosives (No. 15).—The Explosives Ordinance, 1907, applies to gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires, and every other substance used for explosive purposes or pyrotechnic effect and includes fog-signals, fireworks, fuzes, rockets, percussion-caps, detonators, cartridges, and ammunition of every description. The Governor-in-Executive Council is empowered to appoint by Proclamation gunpowder magazines, and such magazines and the storage of powder, its importation into the Colony and sale therein, are subjects to the regulations prescribed by the Ordinance. Explosives, other than gunpowder, are also subject to the regulations relating thereto contained in the Ordinance.

Foreign Trading Companies (No. 23).—The British and Foreign Companies Ordinance, 1907, enables any Trading Company or Corporation registered under Statute in Great Britain or Ireland, or in any British Possession, or in the United States of North America, to be registered as an incorporated company within the Colony, and such registration is to afford conclusive evidence of the company's memorandum and articles of association, and any deeds of such company executed out of the Colony may be registered in the Colony if executed under the company's common seal and in the presence of one witness at least, and the due execution of such deed is to be proved by the affidavit or solemn declaration of one of the witnesses or of the secretary or other officer affixing the seal to be sworn or made before a notary public, or the mayor or other chief

magistrate of any city, town, or borough in Great Britain, or Ireland, or in any British Possession and in the United States before a notary public. Deeds of the company executed in the Colony by an attorney duly appointed thereunto by instrument in writing under the common seal of the company are made binding on the company as if the same were executed under the common seal of the company.

Criminal Procedure.—Ordinance No. 25, 1907, amends the Criminal Appeal Ordinance No. 13, and enables the accused person to be heard and defended by counsel upon his trial or at any stage of the proceedings before the Court. In cases of treason or capital felony the Registrar, when delivering to the accused a copy of the indictment, shall call upon him to select his counsel, if he have the means of employing one, and in default the Chief Justice shall assign counsel and a solicitor to the accused.

Weights and Measures (No. 26).—The Weights and Measures Ordinance, 1907, adopts the English avoirdupois weights on the basis of 1 lb., making the grain $\frac{1}{7000}$th part, the dram $\frac{1}{256}$th part, the ounce $\frac{1}{16}$th part of the pound, and the stone 14 lb., the quarter 28 lb., the hundredweight 112 lb., and the ton 2,240 lb.

Wills and Probate (No. 29).—The Wills and Probate Ordinance, 1907, repeals and amends various sections of the Wills and Probate Ordinance (No. 99) relating to the execution of wills, application for probate, proceedings for discovery of testamentary writings, filing accounts by executors and administrators, etc.

Locust Destruction (No. 30).—The Locust Destruction Ordinance, 1907, enables the Governor to initiate compulsory measures for the destruction of locusts on land in private ownership.

Bills of Exchange (No. 31).—The Bills of Exchange (Crossed Cheques) Ordinance, 1907, enacts that a banker receives payment of a crossed cheque for a customer within the meaning of s. 62 of the Bills of Exchange Ordinance (No. 62), notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

9. WINDWARD ISLANDS.

(i) GRENADA.

[*Contributed by* Sir Charles J. Tarring, *ex-Chief Justice of Grenada.*]

Ordinances passed—14.

Of these, six are Amended Ordinances of no general interest; another suspends the coming into force of the Education Ordinance of 1906; an eighth is a supplementary Appropriation Ordinance; while the Ordinance numbered 14 in the Table does not appear in the collection for the year as printed.

Marriage—Deceased Wife's Sister (No. 4).—Of the remaining five, No. 4, validating *Marriage with a Deceased Wife's Sister*, is an echo of recent much-ventilated legislation in England, and, like the latter, exempts clergymen (and ministers of all religious denominations) from the legal obligation to solemnize such marriages.

Water Supply (No. 5).—Ordinance No. 5 facilitates the provision of a much-needed *Water Supply* for the parish of St. Patrick's.

Ordinance No. 6 provides for the licensing and regulation of *Pilots*.

Cheques.—No. 7 enacts that a banker shall be deemed to have received payment of a crossed cheque for a customer within the meaning of s. 81 of the *Bills of Exchange* Ordinance of 1892, notwithstanding that he shall have credited the customer's account with the amount of such charge before having received payment thereof.

(ii) ST. LUCIA.

This will appear later in the year.

(iii) ST. VINCENT.

This also will appear later in the year.

10. LEEWARD ISLANDS.

[*Contributed by* EDWARD MANSON, ESQ.]

FEDERAL COLONY.

Ordinances passed—13.

Bank Holidays (No. 1).—Eight days are to be kept as close holidays in all banks in the Colony. The King's birthday, the Heir-Apparent's birthday, Empire Day, New Year's Day, Boxing Day, Easter Monday, Whit Monday, the first Monday in August.

Supply (Nos. 2, 6).

Banker (No. 3).—This is an amendment of the Bills of Exchange Act, 1887. A banker receives payment of a crossed cheque for a customer within the meaning of s. 82 of the Act, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

Coroners (No. 4).—A Coroner is not to be obliged to summon a jury to inquire into the cause of death within his district of a person confined in a Lunatic Asylum unless he considers that some reasonable suspicion attends the cause and circumstances of death. If the Coroner decides not to hold an inquest he is to report the facts to the Governor, who may direct an inquest.

Publication of Notices (No. 5).—Where notice of any document, matter,

meeting, sale, or voting of any kind is by any Act, Bye-law, Regulation, or Instrument to be published in any local newspaper, publication or advertisement is henceforth to be made in such manner as the Governor-in-Council may prescribe.

Travelling Expenses (No. 7).—The Governor, his private secretaries and officers, while travelling on duty, are to be allowed their travelling expenses.

Judgments (No. 8).—A judgment entered up against any person in the Supreme Court is to operate as a charge upon all lands of such person within the Colony to the extent of his beneficial interest therein; but this is not to affect purchasers, mortgagees, or creditors until the judgment creditor has filed an application for the sale of such lands towards satisfaction thereof. Every judgment debt is to carry interest at 5 per cent. A judgment of an inferior Court is to have the same privileges on filing in the Supreme Court of a certificate of such judgment.

Cotton Industry (No. 9).—The Governor may, under this Ordinance, make advances to owners for the planting and production, or for the reaping, of a cotton crop. The total sum to be so advanced, during the year, is not to exceed £5,000. Interest is to be paid at 5 per cent. Any person misappropriating an advance is to be guilty of larceny.

Crown Suits Act (No. 10).—Claims by the General Government of the Colony or the Government of any Presidency against any private person are to be brought in the name of the Attorney-General. Claims by private persons against the Government in the nature of "Petitions of Right" may be preferred against the Attorney-General. No execution is to issue against the Crown, but the decree is to be transmitted to the Governor, who may, by money or otherwise, do justice.

Arbitration (No. 11).—This Ordinance adopts the Arbitration Act, 1889 (52 & 53 Vict. c. 49), of the Imperial Parliament, which is declared henceforth in force in the Colony.

Deceased Public Officer (No. 12).—Power is given to the Governor, when a public officer dies, to order that a month's salary, from the date of his death, be paid to his widow or children. To make up for this the officer succeeding to the vacant post is to continue to draw salary at his former rate for a month.

Police (No. 13).—By this Ordinance a police force is constituted for the Colony, to be called the Leeward Islands Police Force, with head-quarters at Antigua. It is to be under the command of a Chief Inspector of Police. The age for enlistment is from nineteen to thirty-five. The police are to be armed. Their authority and privileges, duties and responsibilities, are to be the same as those of an English constable, and are more particularly defined in the Ordinance. Acts 21–32 deal with the discipline of the force. A Police Reward Fund is constituted, made up mainly of fines and penalties imposed on the members, and provisions for good-conduct, pay, and pensions. On any emergency special constables may be sworn in.

(i) ANTIGUA.

City of St. John (No. 1) provides for the government of the City of St. John.

Medical and Poor Relief (No. 2) amends the Medical and Poor Relief Ordinance.

Land Tax (No. 3).—A person who makes default in payment of a tax for thirty days after the same is payable is to pay an additional amount equal to $2\frac{1}{2}$ per cent. on the amount of the tax.

Public Library (No. 4) provides for the appointment of Trustees of the Public Library of the City of St. John, who may frame rules for the management of the Library.

Public Officer (No. 5).—This Ordinance declares it to be within the competency of the General Legislature of the Leeward Islands to pass such laws in respect of the Antigua Presidency as may be necessary to provide for the payment of salary to the widow and children, or other next-of-kin, of a deceased public officer.

Supply (Nos. 6, 8).

Rate for the City of St. John provides for the assessment of a property tax on all land in the city.

Bills of Health (No. 9) fixes the scale of fees chargeable by the Harbour Master for granting a Bill of Health to ships.

Commission on Collection of Rates and Taxes (No. 10).—A bailiff is to be allowed a commission of 5 per cent. as remuneration for collecting rates or taxes.

(ii) DOMINICA.

Definition of Colony (No. 1).—The word "Colony," or "Island," when used in any Act of the Presidency passed prior to the 26th day of March, 1872, is to be deemed and taken to mean the Presidency of Dominica.

Administrator's Salary (No. 2).—This is fixed at £700, rising to £900.

Bills of Health (No. 3).—A Harbour Master is to be appointed, and is authorised to issue Bills of Health to ships at a fixed scale of fees.

Import Duties (No. 4).—Chalk, whiting, and lime are to be admitted free of import duty.

Free Library (No. 5).—This Ordinance establishes a Free Library, given by Mr. Andrew Carnegie, to be supported by an annual grant from the Treasury and subscriptions.

Disease in Plants (No. 6).—To meet this danger the Governor-in-Council may by Proclamation prohibit the importation into the Presidency of any plants, cuttings, roots, etc., as are likely to introduce any plant disease. Plants imported in contravention of the Proclamation may be seized.

Supply (Nos. 7, 9).

(iii) MONTSERRAT.

Ordinances passed—14.

Export Duty on Native Products (No. 3).—This Ordinance imposes an export duty, at a scheduled scale, on the exportation of native products—essential oils, hides and skins, lime-juice, sugar, fruit and vegetables, cotton, cocoa, animals, etc.

Supply (Nos. 4, 13).—Chalk, whiting, and lime, when imported for use in the manufacture of citrate of lime, are to be free of import duty.

Public Officer (No. 6).—This is an Ordinance empowering the Governor to order, on the death of a public officer, that an amount equivalent to a month's salary of such officer, from the date of his death, shall be paid to his widow or his children or other next-of-kin.

Roads (No. 7).—A Road Board is to be established to advise the Commissioner on all matters connected with the repair and construction of roads. An Inspector of Works and Roads is also to be appointed, with the duty of supervising the repairs of public roads and preventing encroachments on or injuries to the same.

Every inhabitant of the Island between the ages of sixteen and sixty is to pay a "road tax" for the upkeep of the roads. For the purposes of the tax the inhabitants are classified, each member of the first division (professional) paying 10*s*., of the second division (tradesmen, mechanics, etc.) 4*s*., and of the third division (domestic servants, labourers, etc.) 2*s*.

Persons liable to work on the public roads are to attend, on notice, with tools and work for eight hours a day.

Owners adjoining any public road may be ordered to keep fences in repair. Drains are to be made and rubbish removed. Penalties are imposed for careless driving. Roads may be changed or diverted, and closed if dangerous. No person is to begin building or repairing any building or wall adjoining a public road without notice to the Inspector of Works.

Importation of Arms (No. 8).—The Governor is empowered, by Proclamation, to prohibit the importation of arms and ammunition absolutely, or under conditions on peril of forfeiture. No dealing in them is to be allowed except under licence. Particulars of any dealings are to be entered in a book. No one—Army and Navy officers, etc., excepted—is to carry arms without a licence. If arms or ammunition are kept, or suspected to be kept, in any premises contrary to the Ordinance, a magistrate may grant a search-warrant.

Commissioner and Treasurer (No. 9) authorises the appointment for the Presidency of Montserrat of a Commissioner who is to be *ex-officio* Treasurer, an Assistant Treasurer, Treasury Officer, and a Clerk. All taxes, duties, moneys, forfeitures, and penalties are to be paid to the Treasurer for the public uses of the Presidency.

Burial (No. 10) amends the Ordinance to establish a Public Burial-ground for various denominations of Christians.

Cotton Traffic (No. 11).—No person is to sell any cotton in the Presidency without having obtained a licence. The application for a licence must state a variety of particulars, the acreage planted and situation, and date of planting; if imported, the place where grown. A licensed seller must keep a record in scheduled form. Buyers must also be licensed. Selling or buying without a licence exposes the seller or buyer to a penalty of £50.

Ordinance No. 13 of 1905, to regulate dealings in cocoa, coffee, limes, spices, and cotton, and to make more adequate provision for the detection and punishment of robberies of growing crops, is to be read as if cotton were excluded.

Sale of Meat (No. 14).—No meat is to be sold in Plymouth except in the market and unless slaughtered in the slaughter-house of the market.

(iv) ST. CHRISTOPHER AND NEVIS.

Ordinances passed—7.

Supply (Nos. 1, 6).

Public Officer (No. 2).—This is an Ordinance analogous to No. 6 of Montserrat.

Fumigation of Plants (No. 3).—The prevention of disease in plants is now a common topic of legislation. By this Ordinance, all plants—which word is given a very wide meaning—imported into the Presidency are, subject to the direction of the Agricultural Authority, to be fumigated for the destruction of any vegetable or insect pests which may be on such plants. Suitable apparatus is to be provided for the purpose. No imported plants are to be landed elsewhere than at a "port of entry." Plants which have been fumigated may be subsequently visited and examined by the Agricultural Authority.

Appointment of Administrator (No. 4).—His Majesty, or the Governor on his behalf, is, under this Ordinance, empowered to appoint an Administrator of the Presidency, to hold office during His Majesty's pleasure.

Land and House Tax (No. 5) amends the principal Ordinance, 1901 by declaring who is the proper officer to levy the tax.

Pond Drainage (No. 6) amends the principal Ordinance by vesting the powers of the Ordinance in the Governor or in his nominees.

(v) VIRGIN ISLANDS.

Supply (Nos. 1, 3).

Deceased Public Officer (No. 2).—This is a similar Ordinance to No. 12 of the Leeward Islands.

Births, Deaths, and Marriages (No. 4).—This is an Ordinance con-

solidating and amending the law as to registration of births, deaths, and marriages. A general Registry Office is to be kept under the control of a Registrar-General. District Registrars are likewise to be appointed. Each District Registrar is to have his name conspicuously exhibited on the outer door of his dwelling-house, and for two consecutive Sundays on the doors of all known places of public worship. Every District Registrar is to inform himself carefully of every birth and death within his district, and minute directions are given as to their duties, especially in the case of illegitimate children and of deaths.

The Register Books are, in the first week in each year, to be taken to a Justice of the Peace, and by him examined and transmitted, with any comments, to the Registrar-General. There is a list of fees payable to the Registrar.

XI. MEDITERRANEAN COLONIES.

1. CYPRUS.

[*Contributed by* STANLEY FISHER, ESQ., *President of the District Court of Kyrenia.*]

Laws passed—12.

Customs Exemption (No. 1).—Hitherto goods imported for the use of the High Commissioner have been exempt from payment of Customs duties. By this Law, subject to a saving in favour of the present High Commissioner, the exemption is abolished.

Sunday Observance (No. 3).—This Law, which has been repealed and substantially re-enacted by a Law passed in 1908, affected the Greek Orthodox Community only, and aimed at preventing members of that Community from doing business on Sundays before 9 a.m. in the principal towns, and 8 a.m. in villages.

Steam Boilers.—No. 5 provides for the inspection of steam boilers by a skilled person who, on finding any defect, must serve a notice on the owner of the boiler, or on the person in charge, specifying the defects. If thereafter the boiler explodes, the owner, in addition to any liability imposed upon him apart from this Law, will be liable to pay compensation at the suit of any person injured by the explosion, unless he proves that the defects were duly remedied or that he was not guilty of any negligence.

Education Laws Amendment.—No. 7 amends the Education Law, 1905, and the Secondary Education Law, 1905, by providing (*inter alia*) that in each of the six principal towns the control of elementary and secondary

education shall, as regards the Greek Orthodox Community, be vested in one committee, to be elected every two years.

Vehicles and Traffic Regulation (No. 8).—This Law deals with the regulation of all kinds of traffic, including automobiles. All vehicles which carry passengers and ply for hire, or are constructed for the carriage of goods or merchandise, must bear a number. A register of the owners of all such vehicles is to be kept. The principal police officer of a District may prohibit the use of a passenger-carrying vehicle which plies for hire if in his opinion it is unsafe; but this power is subject to an appeal to the District Commissioner.

Drivers of passenger-carrying vehicles which ply for hire must have attained the age of 18, and must be licensed. There are penal provisions for enforcing the above-mentioned requirements, and for dealing with dangerous riding and driving in public roads and streets. Provision is also made for the appointment of cab-stands and the regulation of cab-fares by municipal authorities. The Public Vehicles Law, 1901 (see Journal, No. X. p. 359), is repealed.

Municipalities Amendment (No. 9).—This Law aims at giving greater facilities for the election of municipal councils, mainly by amending the Law with regard to the qualification and registration of voters.

Municipal Councils are to be elected for three years, Casual Vacancies being filled by election on April 1 following their occurrence.

The Law as to offences at municipal elections is made more comprehensive, and there are other minor amendments of the previously existing Law.

Village Authorities Amendment (No. 10).—This Law makes good some defects in the Village Authorities Law, 1906, notably by providing for the participation of Maronites and Armenians in the election of Muktars and Azas.

2. GIBRALTAR.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

Ordinances passed—9.

Crown Lands.—The Attorney-General and the commanding officer Royal Engineers are appointed special commissioners to inquire into and report upon Crown lands, and the terms and conditions of letting and dealing with landed property generally in Gibraltar.

Claims against the Crown.—In all cases where petitions of right might be preferred, a suit may be instituted by the claimant against the Attorney-General. The suit is commenced by a petition which is laid before the Governor. If consented to by him, the action proceeds as between subjects, and costs may be awarded accordingly.

Foreign Marriages.—Provision is made by No. 7, whereby a British subject may, for the purpose of complying with the law of a foreign country in which the marriage is to be celebrated, obtain a certificate from the registrar in Gibraltar, to the effect that no legal impediment to the marriage has been shown to exist.

Public Health (No. 10).—This is the most important Ordinance of the year, consisting of 508 sections, besides forms and plans. It comprehends drainage and water-supply, common lodging-houses, and cellar-dwellings, nuisances and offensive trades, food and drugs, infectious diseases, public highways, lighting, fires, public bathing, and public works. The expenses incurred by the commissioners in the execution of the Ordinance are to be defrayed out of a general sanitary rate.

Midwives.—Any woman taking the name of midwife or habitually attending women in childbirth, without a certificate of registration under this Ordinance, is made liable to a fine. To obtain such certificate a woman must have been for at least one year in *bona fide* practice as a midwife, bear a good character, and pass an examination of fitness before a Board to be dominated by the Governor.

3. MALTA.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

Ordinances passed—8.

The legislation of 1907 does not present any feature of general interest. Three of the Ordinances deal with finance, two are in the nature of private Acts, while the others amend existing laws in certain particulars.

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NOTES.

Comparative Law in Blue-Books.

[*Contributed by* C. E. A. Bedwell, Esq., *Librarian of the Middle Temple.*]

Education (*see also Lunacy*).

The school attendance and care of children under five years of age in Belgium, France, Germany, Switzerland, and the United States reviewed in a report by the Consultative Committee to the Board of Education. Full descriptive reports are given of the arrangements made in those countries. (Cd. 4259. 1*s.* 8*d.*)

Labour.

A report by Mr. Ernest Aves upon the Wages Boards established in Queensland, South Australia, and Victoria, and the Industrial Conciliation and Arbitration Acts of the Australian Commonwealth, New Zealand, New South Wales, and West Australia, with a full account of their working. (Cd. 4167. 1*s.* 10*d.*)

The working of the Acts for the regulation of hours of employment in shops in force in Australia and New Zealand, described by Mr. Ernest Aves. (Cd. 4168. 3*d.*)

Local Government.

Memorandum on German Municipal Government with special reference to the extension of towns by Mr. W. H. Dawson. The procedure in Berlin is explained at length. Frankfort and Hamburg also receive consideration, in addition to the laws of Baden and Saxony bearing upon the subject. The government and extension of Washington are the subject of a memorandum similar in scope. (Cd. 4379. Report of the London Traffic Branch of the Board of Trade, 4*s.*)

Lunacy.

Summary of the English, Scottish, and Irish law and practice relating to lunatics, criminal lunatics, inebriates, epileptics, and defective and

epileptic children. Extracts from a paper on "Education and Feeble-minded Children in Germany" by J. G. R. Lewis, Esq., M.A., Headmaster, Woolaston School, Nantwich. Reports made in 1898 by investigators on behalf of the David Lewis Trust, after visits paid to several German colonies, in view of a proposal to establish an epileptic colony in England. An abridgment in English of information in "L'assistance des aliénés en France, en Allemagne, en Italie, et en Suisse," par le docteur Paul Serieux, Médecin en chef des Asiles d'Aliénés de la Seine (Ville-Evrard). Information as to the care and control of the feeble-minded in the self-governing British possessions, America, Austria, Belgium, Denmark, France, Germany, Holland, Hungary, Italy, Japan, Norway, Sweden, and Switzerland. Memorandum of visits to several continental asylums. (Cd. 4219. 8*s.*)

Evidence of Sir William Venables-Vernon, Bailiff of Jersey, as to the law in that island for the protection, control, restraint, and administration respectively of the person and property of all such as are by reason of infancy, mental incapacity, inebriety, or prodigality unable to take care of themselves or manage their own affairs. (Cd. 4215. 7*s.* 1*d.*)

Mines.

Statistics relating to persons employed, output, and accidents at mines and quarries in the British Colonies and in foreign countries. (Cd. 4145. 1*s.* 8*d.*)

Old-Age Pensions.

Memorandum on the Old-Age Pensions Scheme in force in New Zealand and the scheme of insurance against invalidity and old age in force in the German Empire. (H.C. No. 159. 1*d.*)

Parliamentary Procedure.

Among the British self-governing Possessions only the legislative assemblies of the Australian Commonwealth, New South Wales, New Zealand, Ontario, Queensland, and Victoria place any restriction upon the duration of speeches. The rules upon that point chiefly relate to motions for the adjournment of the House. (H.C. No. 301. ½*d.*) France and Germany have no rules on the subject, but Belgium, Italy, and Spain have, and Austria and Switzerland obtain the result by indirect means. The subject of limiting the length of speeches in the Senate of the United States has frequently been under discussion, and is dealt with at some length in the Report. (Cd. 4252. 2*d.*)

Red Cross Emblem.

Translation of the laws and regulations respecting the abuse of Red Cross emblem of the Argentine Republic, Austria, Belgium, Bulgaria,

Denmark, Germany, Hungary, Italy, Norway, Portugal, Roumania, Russia, Servia, Spain, and the United States. (Cd. 3933. 7½*d.*)

Wills.

A statement of the law in France, Germany, Italy, and Russia showing the limitations upon testamentary bequests. A summary of the law on the subject in the different States of the United States, and details of it in the State of New York. (Cd. 4251. 3*d.*)

Illegitimate Children under the Roman-Dutch Law.[1]—The position of illegitimate children under the Roman-Dutch law, with regard to their rights of hereditary succession, is of some interest, and an important judgment of the Supreme Court of Ceylon, delivered by Hutchinson C.J. and Wood Renton J., and dealing more particularly with the rights of "adulterine bastards" under the Roman-Dutch law and Ceylon law, is given below.

Under the earlier Roman-Dutch law a distinction was drawn between the offspring of a woman with whom marriage was not forbidden and with whom the father, and he alone, had connection which was neither adulterous nor incestuous, and the children of a common prostitute. The former were called *natural children* and the latter *spurii* (*Censura Forensis*, 1. 1. 3. 8). But, later on, this distinction was not observed, and *natural children* and *spurii* were indiscriminately classed under the former designation—a concubine being allowed no privilege above other abandoned women (*Censura Forensis*, 1. 1. 3. 9, and Grotius, 1. 12. 5). Illegitimate children were, therefore, classified under the two general heads of *natural children* and children born *ex prohibito concubitu* (Grotius, 1. 12. 4).

Children born *ex prohibito concubitu* are children begotten in adultery or of two persons related to each other within the prohibited degrees of consanguinity or affinity (Grotius, 1. 12. 6).

Natural children were admitted to succeed to their mother, but they had no right to succeed to their father or kinsmen on the father's side. The offspring of a criminal union, however, viz. those born in adultery or incest, succeed neither to their father nor to their mother nor to the kinsmen or relatives of these, nor can they take under their wills, but they have a right to what is necessary for their maintenance (*Censura Forensis*, 1. 1. 3. 10, and Walter Pereira's *Laws of Ceylon*, vol. ii. pp. 48 and 49).

JUDGMENT.

HUTCHINSON C.J.—This appeal raises a question of fact, and also a question of law which is not quite covered by authority.

The question of fact is whether the two infant petitioners are the legitimate or illegitimate children of their mother, the deceased intestate whose estate is being administered. There is an affidavit by John Dias Wickramanayake, the

[1] The editors are indebted for this report by Mr. T. Akbar, advocate, to the kindness of the Colonial Secretary, Colombo.

petitioners' next friend, deposing that the intestate was his wife (which, however, admittedly is not the fact), and lived with him as such from 1887 until her death, having long previously separated from her husband (who is the administrator of her estate), that during her cohabitation with him she gave birth to the petitioners, and that he is their father. Her father deposed that in 1882, in consequence of her husband's ill-treatment of her, she went to live with him at Gampola and lived with him from 1882 to 1887, and that he maintained her, and that her husband never came to see her during that time, and did not contribute towards her maintenance; and that in 1887 she went and lived with J. D. Wickramanayake, and lived with him until she died. Her husband deposed that in 1882 her father removed her from Cotta, where they were living, to Gampola; that after that they never lived together, and in fact he never saw her till her death; that the petitioners were not his children; that he never went in search of his wife or made any attempt to get her back.

Upon this evidence the District Judge thought that there could be no doubt that the petitioners were not the children of the husband, but were born to J. D. Wickramanayake in adultery. I think that that was a right conclusion. The appellant's counsel has suggested that the husband's evidence ought not to be admitted in such a case to prove that he had no access to his wife; and there is a dictum of Layard C.J. in 6 N.L.R. 381 to that effect, an opinion upon which it is said magistrates have acted in cases of application against a husband for maintenance of a child. S. 112 of the Evidence Ordinance makes the fact of a child having been born during the continuance of the marriage conclusive proof that it is the legitimate child of the husband, unless it can be shown that he had no access to the mother at any time when the child could have been begotten. S. 120 enacts that in all civil proceedings the husband or wife or any party to the suit shall be competent witnesses. The husband is therefore a competent witness for the purpose of proving that he had no access. Suppose it were proved that the wife had been living continuously in Colombo, and living with another man, during the whole of the twelve months before the child's birth, and the husband was called as a witness to prove that during the whole of that time he had been living in England, his evidence, according to the view which has been urged upon us, would be inadmissible; but the law and reason alike declare that it is admissible. Possibly all that Layard C.J. meant was that it is not enough for the husband to swear that he had no connection with his wife, if it is possible that he had, as it would be, for example, if they were living in the same village.

The remaining question is whether the woman's illegitimate children born in adultery are entitled to inherit her estate. The marriage was in 1870; so that s. 37 of Ordinance 15 of 1876 does not apply. Neither does s. 40 apply; that section makes the Roman-Dutch law as it prevailed in North Holland applicable "if the present Ordinance is silent"; but by s. 24 that does not apply to this case, because s. 40 only applies where the intestate dies after the proclamation of the Ordinance and is then unmarried, which was not the case here. So that we have to decide the question according to the law of the Colony as if the Ordinance had not been passed.

When the case was before this Court on a previous appeal, Middleton J. considered this question on the assumption, which was not then proved, that the children were illegitimate. He expressed an opinion that by the Roman-Dutch law illegitimate children born in adultery are not entitled to inherit their mother's property with the legitimate issue.

He gives the authorities in detail, and I need not go through them again. In the argument before us reference was also made to Grotius, 2. 18. 7; 1. 12. 2–4; and

Maasdorp's *Law of Persons*, 8. 108. The rule which I gather from the authorities is that children sprung *ex prohibito concubitu* are debarred from inheriting. And *prohibitus concubitus* seems to mean the same thing as *damnatus coitus*; viz. a *concubitus* which is an offence against the law. And as the concubitus of a man who is not her husband with a woman who has a husband living was such an offence, and as incest was also such an offence, it followed that children born in adultery or incest could not inherit. But now that adultery is no longer an offence it is not prohibitus in any other sense than the living together of an unmarried man with an unmarried woman is prohibitus. I think, therefore, that children born in adultery are not now born *ex prohibito concubitu*, and that they have the status simply of ordinary illegitimate children and can inherit their mother's estate with her legitimate children. I would allow the appeal, and declare that the petitioners are allowed to share in the estate of their mother Jane Perera, together with her legitimate children, and I would remit the case to the District Court to dispose of on that footing. I think the costs of this appeal should be paid out of the estate.

Wood Renton J.—I agree that appellants are proved to be adulterine bastards; and I think that the Roman-Dutch law which made children born *ex prohibito concubitu* or *ex damnato coitu* incapable of succeeding to any share of their mother's estate is in force in Ceylon. The question, however, remains, whether under the Roman-Dutch law the incapacity of adulterine bastards in the eye of the law of intestate succession was an incapacity inherent in their status, or one arising from the fact that the union from which they sprang was positively prohibited, and punished as a criminal offence. In other words, did the Roman-Dutch law jurists mean that adultery *per se* could create no right of intestate succession or did they give it merely as an illustration of *prohibitus concubitus* or *damnatus coitus* for the time being under their own law? With diffidence and hesitation I adopt the latter view. The words *overwonne bastarden* (unlawfully begotten) which the Roman-Dutch law jurists applied in distinguishing the offspring of a *prohibitus concubitus* from the *speel kinderen* or mere bastards, seem to point to the conclusion that it was the prohibition of the union that created the incapacity (see Van Leeuwen, Kotze's Translation: i. ch. 7, ss. 3 and 7; Nathan, *Common Law of S.A.* i. p. 213, s. 379). In Ceylon, adultery, unlike incest, is not a criminal offence: it is not prohibited by law save in the case of incestuous adultery; after the dissolution of the marriage tie, which made the relationship adulterous, the parties can marry (*Karonchihamy* v. *Angohamy*, [1907] 8 N.L.R. 1), although s. 22 of Ordinance 19 of 1907—re-enacting earlier legislative provisions—prevents them from legitimating the children of their union by the marriage. Adultery is a moral offence, and the law discourages it. But I do not think that, unless it is incestuous, it is now a *prohibitus concubitus* or *damnatus coitus* in Ceylon within the meaning of Roman-Dutch law. I agree to the order proposed by my Lord, the Chief Justice.

The Intricacy of Labour Legislation.—The interesting report of the British Association for Labour Legislation as to the administration of labour laws in the United Kingdom draws attention to one feature of such legislation. After pointing out that the Home Secretary has wide powers under the Factory and Workshop Acts, and that these powers are very freely exercised, the report remarks:

It is beginning to be felt that the multiplicity of Orders is becoming burdensome, and, although complaints are rightly made that certain dangerous trades

are still without regulations, and that the powers of the Secretary of State are still insufficiently exercised in this direction, yet the complications arising from an excessive number of Orders on a variety of subjects have the serious disadvantages of rendering administration more difficult, and making it impossible for the persons chiefly concerned to have a detailed knowledge of the law.

If such difficulties are experienced by those who administer the law—for the most part experts—what must be the position of those who are the object? That which Bentham called the virtue of "cognoscibility" is becoming a virtue more and more difficult to attain.

The Rights of Next-of-Kin.—The Editors are indebted so Mr. E. J. Schuster for the three following Notes, the first of which—touching the State's right of inheritance—possesses a peculiar interest at a time when the State's responsibilities are so rapidly growing:

"Among the financial proposals which have been put before the German Reichstag, there is one which seems to open a new source of income without causing any appreciable hardship to any class of persons or to any trade or interest. We refer to the proposed exclusion of the rights of distant kindred in cases of intestacy. A person who has died intestate without leaving any issue or any parents, or any brothers or sisters, or any nephews or nieces, would, as a general rule, be much surprised if he heard of the manner in which his estate was distributed under the law of intestacy, and in many cases he would probably have been more inclined to allow his savings to go to the Crown than to let them go to some distant cousin whom he never saw and never wished to see. Moreover, the next-of-kin who take any property under the present law have frequently to wait for a very long time before it has been ascertained by elaborate and expensive inquiries whether any relatives of nearer degree have survived the intestate. They thus suffer the pangs of hope deferred, and may ultimately after all be disappointed by discovering that the inquiries were more successful than they anticipated. The unexpected 'windfall' from the estate of an unknown descendant of an unknown common ancestor has often wrecked the life of the recipient by leading him into extravagance or taking him away from his former employment. On the other hand, the Crown is frequently in a position to do justice to the claims of persons who were bound to an intestate by ties of nature or affection which the law does not recognise and which the next-of-kin are apt to disregard. We know of no valid argument against the change; neither the person who wishes to benefit a distant relative and fails to take the small trouble of making a will in his favour nor the person who reckons upon the death and intestacy of remote kindred deserves any sympathy."

Comparative Criminal Law.—"The great work on this subject[1] which

[1] *Vergleichende Darstellung des deutschen und ausländischen Strafrechts* (Berlin: Liebmann).

has been prepared by the most eminent German criminal lawyers under the auspices of the Imperial Judicial Department is now approaching completion. It will ultimately contain about twenty-four volumes and is divided into two principal sections of which one deals with the 'general part' of criminal law (classification of crimes, criminal responsibility, degrees of culpability, modes of punishment, etc., etc.), while the other contains a number of separate treatises on the individual classes of crimes. The work is intended to clear the ground for the revision of the somewhat antiquated German Penal Code, but apart from this it is probably the greatest achievement hitherto attained in the domain of comparative law, and it will be an indispensable help to any person interested in the methods of criminology and in the treatment of criminals."

Was the Author of the Writings of "Gajus" a Lady?—"A learned correspondent of the *Deutsche Juristenzeitung* asks this question and answers it in the affirmative; as evidence for this remarkable fact, he quotes an extract from the commentary *ad legem Juliam et Papiam* (Dig. 35. 1. 63, § 1), which refers in a somewhat sentimental tone to conditions in restraint of marriage, and a passage from the Institutes of Gajus (§ 190) in which the inferior position of married women is spoken of with great indignation. If this conjecture should be corroborated, perhaps the female bachelor of laws who appears in the Courts will in future be referred to in the daily press under the designation of 'Gaja,' and that the name of 'Portia,' which is so singularly inappropriate, will be discarded."

Progress in Private International Law.—Is there progress in private international law? Is there growing a closer approach to uniformity? The answer would be probably "Yes," if one had in view the results of the various recent Conferences at The Hague. The answer might be "No," or one of uncertainty, if we were to look to some recent decisions in this country, or to the article by Dr. Ludwig Beer in the *Zeitschrift für Internationales Recht* entitled "Neue Entwickelungsstufen des internationalen Privatrechts." It would almost seem as if, as to some parts of international law, we have not advanced beyond the state of things at which Savigny left it. Dr. Beer deals chiefly with the controversies as to obligations, and shows in an impressive memoir how not only jurists, but legislatures, are divided as to the principles to be applied to the construction of obligations in private international law, the *lex loci contractus*, *lex loci solutionis*, *lex domicilii*, *lex originis*, the "autonomy" of the parties, such autonomy subject to restrictions, the law of nationality, the application of different principles to "gläubiger" and to "schuldner," have their partisans. Even those who adopt the same formula are not agreed as to its contents. What, for example, is to be understood by the place of performance, the "Schuldort" or the "Leistungsort"? Dr. Leonhard, who has written specially on these points, answers: "Der Leistungsort liegt dort, wo die Schuld am besten lokalisiert werden kann. Der sogenannte 'Leistungsort' ist der örtliche

Mittelpunkt für die Schuld, der Sitz des Schuldverhältnisses"; and the author distinguishes between this and the "Vollzugsort." With such expositions and elucidations, the darkness steadily thickens.

The Working of the Capitulations in Turkey.—The present position of affairs in Turkey gives exceptional interest to a careful study of *La Justice ottomane* which M. André Mandelstam has made in a book just published. It is obvious that M. Mandelstam thinks that the present state of things cannot be permanent. There are serious and recurring points of discord between the Porte and the various Powers. One of the acutest and most frequent is that as to the position of the dragoman, who, according to usage sometimes questioned, but on the whole recognised, attends the sittings of the mixed tribunals and signs the *procès-verbal*, the interrogatories, and the judgment. The Porte maintains that the signature of the dragoman is merely the last proof of his "assistance" which the Capitulations require at the trial. He has nothing to do with the nature of the judgment, which is valid without his signature. The opposing view is that he may express his opinion and refuse his signature—that each case, to quote the words of the Spanish Legation, putting forward this contention, "est entendue et jugée de concert avec le drogman." M. Mandelstam seems to agree with the contention of the Powers. Obviously the present state of things is extremely unsatisfactory; as he says with truth, "les droits des parties dépendent trop souvent de l'issue changeante des conflits entre les juges et le dragoman." It will be interesting to watch the effect of Parliamentary institutions upon the anomalous jurisdiction and privileges of foreign Powers in Turkey.

The South African National Convention.—The Editors are indebted to Mr. Craik, late Legal Adviser to the Transvaal Chamber of Mines, for the following note, which is still of interest though events have moved since it was written: "Publication must now be imminent of the report of the South African National Convention, which has been sitting intermittently since October, 1908, to consider the question of the closer union of British South Africa. The first definite action in this matter was taken in January, 1907, when in response to an invitation from the Ministers of Cape Colony, of which Dr. Jameson was then Premier, Lord Selborne as High Commissioner published a memorandum reviewing the present mutual relations of the British South African Colonies, with the expressed object of enabling the people of the country to appreciate the difficulties of administration under the present system, and to consider whether it was advisable to establish a central National Government.

"In June of the same year an Intercolonial Conference held for the purpose of framing a new customs agreement resolved that a National Convention should be summoned to consider the situation, and, this resolution having been approved by the Parliaments of the four self-governing Colonies, the Convention duly came into being. From the stand-

point of comparative legislation the situation presents some interesting features. In the first place, the existing constitutions of the various South African Colonies are a departure from the precedent set in other self-governing dominions in the British Empire, in all of which, we believe, the instrument of government is to be found in an Act of the Imperial Parliament. This is nowhere the case in South Africa. In the Cape and Natal what is called 'representative government' was established in 1850 and 1856 by Order-in-Council and Royal Instructions to the Governor, while 'responsible government' depends on statutes of the colonial legislatures. In the Transvaal and the Orange River Colony 'responsible government' itself was granted by Orders-in-Council without reference to either the Imperial Parliament or the local legislature. In all four Colonies, however, the Crown has now parted with the right to amend the existing constitutions, and, as the colonial Parliaments cannot give validity to their enactments beyond their respective borders, it seems clear that a South African constitution can only be created by Act of the Imperial Parliament. In the second place, it is tolerably certain that the South African demand for closer union will only be satisfied by unification, as opposed to federation —that is to say, that any local authorities that may be set up must derive their powers from, and be subject to alteration by, the central national Parliament. It follows that the constitution, instead of being in essence a treaty between the various States composing a federal union, will be the charter of a sovereign government. It will therefore be possible to amend it by Act of the legislature established thereunder, instead of being under the necessity, as is apparently the case in Canada and Australia, of resorting to a fresh Imperial Statute for any amendment. The present position in South Africa differs so widely from that which prevailed in Australia before federation, that the questions upon which most stress is laid in the present discussion are quite different."

The Monument to Albericus Gentilis.—Last September took place, in the town of San Ginesio, a ceremony which gave pleasure to every student of international law. The work which Alberic Gentil did, as one of the founders of the science, has long been acknowledged, but its value has of late received a greatly increased recognition, owing largely to the pious labours of Professor Holland. We take from the *Revue de Droit International* an account of the ceremony and the circumstances in which it was held.

L'INAUGURATION DU MONUMENT D'ALBÉRIC GENTIL À SAN GINESIO.

Il y a de longues années que la *Revue* mentionnait la constitution de comités qui se proposaient de rendre hommage à la mémoire d'un homme qui a été l'un des fondateurs de la science du droit des gens, Albéric Gentil. Le mouvement qui s'était produit alors avait commencé quand, le 7 novembre 1874, M. Thomas Erskine Holland, prenant possession de la chaire de droit international et de diplomatie fondée à l'Université d'Oxford, avait, dans une magistrale leçon, fait ressortir l'immense mérite de l'auteur de *De iure belli* et avait reconstitué sa

biographie, en le suivant pas à pas dans sa carrière troublée d'abord par la persécution religieuse, puis calme et sereine, grâce à l'appui de nobles protecteurs et à l'accueil bienveillant de l'Université d'Oxford.

Né en 1552 à San Ginesio, dans la marche d'Ancône, Albéric Gentil devint docteur en droit de l'Université de Pérouse en 1572; la même année, il fut nommé juge à Ascoli; en 1575, il fut élu aux fonctions d'avocat de sa ville natale et chargé en cette qualité de la revision des statuts; mais, en 1579, il fut poursuivi comme hérétique par le tribunal de l'Inquisition. Le procès qui lui fut intenté ainsi qu'à son père, Matteo Gentil, et à plusieurs membres de sa famille, se termina à Rome, le 2 février 1581, par la condamnation des accusés à la prison perpétuelle et à la confiscation des biens.

Matteo Gentil parvint à s'échapper avec ses deux fils Albéric et Scipion; lui-même trouva un asile à Laybach; Scipion enseigna plus tard le droit à l'Université d'Altdorf; Albéric gagna l'Angleterre, où il fut reçu avec faveur par le comte de Leicester, chancelier de l'Université d'Oxford, qui le recommanda au vice-chancelier et aux autorités académiques. Le jeune savant obtint l'autorisation d'enseigner; il vit reconnaître son grade de Pérouse et il fut "incorporé" parmi les docteurs en droit. En 1587, il fut nommé professeur royal de droit romain. En 1600, il devint membre de la société des avocats de Gray's Inn à Londres; en 1605, il fut chargé par l'ambassadeur d'Espagne de défendre les intérêts des sujets espagnols devant les tribunaux anglais; mais tout en pratiquant le droit, il continua à occuper la chaire d'Oxford. Il mourut le 19 juin 1608.

Quand, en 1875, un comité se constitua en Angleterre, sous la présidence d'honneur du prince Léopold et la présidence de sir Robert Phillimore, il fut suggéré que peut-être la meilleure manière d'honorer le grand jurisconsulte serait de rééditer quelques-unes de ses œuvres et de placer une table commémorative dans l'église de Saint-Hélène, Bishopsgate, à Londres; on venait de découvrir que c'était là qu'il avait été inhumé.

M. le professeur Holland se chargea de la publication du traité de *De juri belli*; il s'acquitta de sa tâche d'une façon admirable et dans la *Revue* Alphonse Rivier lui rendit justice. "M. Holland, écrivit-il, a fait plus qu'il ne dit. . . . Il s'est livré pour Gentil au travail que Barbeyrac a fait pour Grotius; il a recherché, contrôlé et précisé les innombrables citations dont l'auteur avait bourré son livre sans indiquer exactement leur provenance. Un index détaillé des ouvrages et des auteurs clôt le volume. . . . La préface contient une notice sur Gentil où plusieurs points sont éclaircis et mis hors de contestation."

La table commémorative fut inaugurée, le 6 juillet 1877. Elle est en marbre; l'inscription latine rappelle les mérites du célèbre jurisconsulte; sur les côtés sont représentées les armes de la famille Gentil et celles de la ville de San Ginesio, de l'Université d'Oxford et de l'Université de Pérouse.

Il restait à édifier dans Sa ville natale un monument qui rappelât la mémoire de l'illustre écrivain. Le comité italien s'était constitué au mois de septembre 1875; il avait comme président d'honneur le prince royal Humbert et comme président effectif Mancini. Au nombre des adhérents étaient Garibaldi, Crispi, César Cantu, Visconti Venosta, Bonghi, Villari, Pasquale Fiore, Pierantoni. Diverses circonstances ont amené un retard considérable dans l'exécution du projet. Enfin, le 26 septembre dernier, l'inauguration du monument a eu lieu.

La petite ville était en fête et à sa joie participaient les municipalités voisines. Les Universités de Macerata, d'Urbino, de Camerino, de Pérouse étaient représentées. Le gouvernement, l'administration, la magistrature, le monde politique avaient leurs délégués. L'initiateur des hommages rendus à Albéric Gentil, M. le professeur Holland, était présent; la ville de San Ginesio, qui, en 1875, l'avait

nommé citoyen honoraire, avait voulu, une fois de plus, lui manifester sa reconnaissance et elle l'avait invité à assister à la cérémonie. N'a-t-il pas "ressuscité" Gentil; n'a-t-il pas fait revivre pour la science l'Italien qui, il y a trois siècles, traitait en des ouvrages remarquables les principales parties de l'importante discipline du droit des gens?

La statue en bronze se dresse sur l'antique place publique. Œuvre du sculpteur Giuseppe Guastalla, elle représente Gentil revêtu de la toge et du bonnet de docteur en droit de l'Université d'Oxford, tenant à la main quelques feuillets de papier et donnant une leçon; sur la face antérieure du piédestal est l'image de la Paix.

Parmi les discours qui furent prononcés nous citerons celui de M. Leti, membre du comité Gentil de Rome et celui de M. Rava, ministre de l'instruction publique du royaume d'Italie. M. Rava a insisté sur l'influence exercée par Gentil, et il a fait valoir que déjà un grand progrès se constatait quand, moins d'un demi-siècle après la mort de l'auteur de *De juri belli*, les événements politiques aboutissaient à la paix de Westphalie. Dans son éloge, il a fait ressortir les qualités principales du maître: le libre examen, la recherche de la vérité et la foi en la justice.

A History of Roman-Dutch Law.—We have received from the African Book Co., Limited, a copy of the History of Roman-Dutch Law, by the Hon. J. W. Wessels, one of His Majesty's judges of the Supreme Court of the Transvaal. For the present we reserve a detailed notice of this valuable work, which is the first attempt in English to deal with the history of the Roman-Dutch Law in systematic form. Meanwhile it is of interest to notice that the view of *causa* adopted by the learned author in his chapter on Obligations coincides with that recently suggested in this Journal (No. XVIII., pp. 240-42).

A Witch-Gown.—Witchcraft—when the story of it comes to be written—will form a strange chapter in the history of primitive man. Here is a phase of it described by Major R. Willans, Assistant District Commissioner for Sierra Leone, in the Journal of the South African Society, which is not without its humorous features:

"Konnoh country is peculiarly exempt from all such disturbing societies as the Leopard, Boa-constrictor, etc., so common in Mendi land. Yet the one great superstition prevailing is that of witchcraft. Witchcraft is common to a lesser degree in other parts of the Protectorate, yet in Konnoh country witchcraft is attributed to anything and everything that is beyond their limited understanding. According to their belief there are still men and women who have the power of witchcraft, and who can not only cause the death of new-born children, but maliciously ruin farms and do all sorts of mischief. So firm is the native belief on this subject that when any new-born child dies without apparent reason, it is buried with the solemn warning that unless it arises and destroys the witch that killed it before the fourth day after burial, the witch will devour the corpse on the fourth day. Within one week, at the time of writing this, I have had to deal with three cases in which witchcraft was concerned. The first case was a dispute as to the possession of a witch-gown owned by a deposed

Paramount Chief and claimed by his successor. These witch-gowns are supposed to be invisible, except to those whose eyes have been dressed with a special medicine. Such a gown is reported to be made of metal, and not only does it give its owner complete immunity from every kind of witchcraft, but it also greatly enhances his reputation. I asked if any one had ever seen such a gown, and received a negative reply. Only four are supposed to be in Konnoh country, and the owners are so eager for protection that they do not make the necessary medicine to let others see them. The deposed chief in question always appeared before me most shabbily dressed, whilst all the others were in their finest clothes; he had only to remark to the others that he was wearing his witch-gown and at once became an object of admiration and envy. This being a case out of the power of the District Commissioner, I referred it to a Court of native chiefs, who decided that the gown remained the property of the deposed chief during his lifetime, but reverted to the new chief on the former's decease. The new chief is still lamenting the fact that the old one will not make the necessary medicine to permit him to view his future property." This "witch gown" brings back memories of Hans Andersen's story of the king's invisible garments.

"The second case was that of a well-to-do sub-chief, on whom several lawsuits in the Native Court came at once. He summoned a witch doctor from Kissi country to ascertain the person responsible for his misfortunes (or rather his exposures). A regular comedy of complications resulted, and feeling ran very high, which finally resulted in my burning the witch-finder's paraphernalia, making him eat of the ashes, and putting him over the boundary.

"The last case was more serious. A child had died in a remote part of the country whose death was attributed to witchcraft. Immediately a filibustering sub-chief arose, went to the town, described the whole case as a danger to the country, and, as a punishment, took away eight people as domestic slaves. This chief is now re-considering his action in Kennema gaol."

"**The Roman Law of Slavery.**"[1]—Jowett has somewhere remarked that if the inner life of that Greek civilisation, which was outwardly so brilliant, had been revealed to us, we should probably have turned away with loathing and abhorrence. The same thought haunts one in reading this learned volume of Mr. Buckland's. It reveals what is the dark background of Roman civilisation—slavery. The slave—under the Empire—was everywhere, in the streets, in the home, in the country farm. The slave filled every office from that of cook to philosopher. He was negotiator, librarius, medicus, actor, dispensator, pædagogus, actuarius, and a hundred things besides; and unless all literary tradition is wrong his reputation was

[1] By W. W. Buckland, Fellow and Tutor of Gonville and Caius College, Cambridge. (University Press.)

notoriously bad. The system was as demoralising to the master as to the slave. For the young no worse environment could be conceived than that of the servile household. The Roman boy, as Cicero tells us, was sent to school to escape—strange paradox!—the contamination of home. But what other result could follow from a system which treated the slave as a mere *res*—a chattel incapable of rights—*pro nullo*—as both the civil and prætorian law of Rome did? Yet it is "pretty to observe," as Mr. Pepys would say, how all the time the leaven of a higher law—the law of nature—was working in the hard Roman mind, and how before this natural law the slave as time went on grew to occupy a very different position, "quia, quod ad jus naturale attinet, omnes homines æquales sunt." The slave was a chattel, but he was a human chattel, *homo*—a man like other men before the gods. Hence the killing of a slave was not only a delict, it was a crime; the Lex Cornelia, which made it capital to kill a man, included slaves in the term *homo*. Theoretically under the Republic there was no legal limitation on the power of the dominus; but this did not mean that the slave was wholly unprotected. The Censor could, and did, check wanton cruelty, and later on legislation did the same. By the Lex Petronia a master was forbidden to punish his slaves by making them fight with beasts, and though a master might expose a sick slave on the island of Æsculapius, Claudius ordained that if the slave recovered he was to be free. Domitian forbade the castration of slaves for commercial purposes. Hadrian suppressed private prisons (*ergastula*) both for slaves and freemen, and likewise forbade the sale of men or women to lenones or to lanistæ, the purveyors for gladiatorial shows. Antoninus Pius provided that if a slave complaining of ill-treatment fled to *fana Deorum* or the statue of the Emperor for sanctuary, the complaint must be inquired into, and if it was true, the slave was to be sold so that he should not return to the old master. The lot of the slave was made easier, but the very mitigations do but reveal the inherent harshness and inhumanity of the whole system. Mr. Buckland's work is not only a marvel of erudition, but profoundly interesting in its bearing on Roman life. We hope to return to it again.

A View of the Workmen's Compensation Acts, 1897, 1906.—Sir John Gray Hill, whose experience entitles him to speak with authority, has been passing some criticisms in a recent pamphlet on the Workmen's Compensation Act of 1906. The Employers' Liability Act of 1880 was, he admits, defective. Parliament might have gone farther in that year and adopted the law contained in the French Civil Code (Art. 1384)—the law also of Belgium, Italy, and Spain—whereby all employers are made liable for the negligence of their employees, whether to strangers or co-employees, the fact of common employment not constituting any exception to the general rule or preferably, perhaps, might have adopted a compulsory system of insurance dealing with injuries as well as sickness, to which both employer and

employee should contribute—such a system as that which now exists in Germany and Austria. Instead of taking either of these courses, Parliament passed the Workmen's Compensation Act, 1897, throwing on the employer liability for all accidents to employees arising out of and in the course of the employment, unless the accident was attributable to "the serious and wilful misconduct" of the employee. Under the Act of 1906, even that qualification vanishes if the accident results in death or serious and permanent disablement. This, Sir John Gray Hill thinks, is a grave injustice to the employer, and it has been made worse by the "benevolent" construction which the Courts have put on the words "accident arising out of the employment." The giving illegitimate relations—being child, grandchild, parent, or grandparent of the deceased—as the Act does, the right to claim as his dependents, opens the door, in his opinion, to fraud and perjury, while it removes one of the restraints upon immorality. Again, proceedings under the Act being conducted at the employer's exclusive risk as to costs and the exemption of the employee from payment of Court fees prior to award, tend, he thinks, to encourage speculative claims. Of course the employer may take refuge in insurance, but insurance is a heavy addition to management expenses. The practical result is that masters will not take men or women of weak physique or getting on in years owing to the increased risk; and employment suffers; workmen get careless, knowing their fellow-workmen are protected; malingering is becoming common, to the detriment of the independence of our national character; and the instinctive goodwill of a master towards his domestic servants is poisoned by the thought that such domestic may at any moment be transformed into a hostile litigant. This is not a pleasant picture, but Sir John Gray Hill, while thinking the Acts a false step, realises that both political parties are too deeply pledged to their principle to go back, and he confines himself to suggesting a series of amendments to meet the more obvious defects of the Acts.

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